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ADMIRALTY

JURISDICTION, LAW, AND PRACTICE.

ADMIRALTY

25
C

JURISDICTION, LAW, AND PRACTICE.

With an Appendix,

CONTAINING RULES, STATUTES, AND FORMS.

54419

By M. M. COHEN,

PROFESSOR OF COMMERCIAL LAW, EQUITY, AND ADMIRALTY IN STRAIGHT
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NEW ORLEANS ACADEMY OF SCIENCES; ETC.

"Simplicitas legibus amica."

JUSTINIAN, INST. §. 2. 2.

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1883

JOHN WILSON

TO
PAUL FOURCHY, Esq.,
PRESIDENT OF THE MERCHANTS' MUTUAL INSURANCE COMPANY OF NEW ORLEANS,
AND CHAIRMAN OF THE COMMITTEE OF THE NEW ORLEANS BOARD OF
UNDERWRITERS ON GENERAL AVERAGE,

WHOSE KNOWLEDGE OF THE THEORY AND PRACTICE OF
INSURANCE AND MARITIME LAW
IS UNSURPASSED,

This Book
IS RESPECTFULLY DEDICATED.

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P R E F A C E.

It is proper, perhaps, to state, as showing the author's qualifications for this work, that he has been extensively engaged in practice in the Admiralty Courts, and that he has delivered courses of lectures, as "Professor of Commercial Law, Equity, and Admiralty," before one of the incorporated law schools at the South. The favor with which these lectures were received, both by the students and by experienced members of the profession, prompted the preparation and publication of this book.

No effort has been spared to bring the matter within as small a compass as was consistent with a thorough and comprehensive treatment of the subject.

The numerous notes of cases which the author had made for his own use in practice have been revised and condensed so as to preserve the proper proportions between the different parts; and great pains have been taken to eliminate all that would not be of practical value to the bench and the bar.

The author desires to acknowledge his indebtedness to the lucid treatise by Edwyn Jones, Esquire,

entitled "The Law of Salvage as administered in the High Court of Admiralty" (London, 1870). His thanks are also due to Mr. Justice Woods, of the United States Supreme Court, for the loan of unreported opinions by himself and Mr. Justice Bradley; to Circuit Judge Pardee and District Judge Billings, both of whom courteously and promptly permitted him to temporarily withdraw records from their respective courts; to Joseph P. Hornor and Charles S. Rice, Esquires, who kindly placed their large and select libraries at his disposal; to Judge Magrath, of South Carolina, for certain of his unreported decisions; and to Dr. James Burns, the ripest scholar of his acquaintance, and from whom he has received invaluable aid.

Out of a large number of admiralty cases in the District of Louisiana the reader will find here printed, for the first time in any book, interesting and important decisions by Justices Bradley and Woods, of the United States Supreme Court, and by other very able and learned Judges, some decrees as recent as the month of February, 1883.

The Index may, by some, be objected to as too full and minute; but a long and large experience inculcates the lesson that, in the exigencies of *Nisi Prius* trials, this is a fault which "leans to Virtue's side."

M. M. C.

NEW ORLEANS, March, 1883.

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NOTE.

NEW ORLEANS, Feb. 23, 1883. The following decision just rendered, and which, therefore, could not appear in the body of my book, deals with questions which seem to me to be of sufficient interest to warrant the insertion of it in this place.

M. M. COHEN.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF LOUISIANA.

TURNBULL, MARTIN, & Co.	}	<i>Admiralty Appeal.</i>
v.		
THE CITIZENS' BANK OF LOUISIANA.		

Libel *in personam* for balance of freight and for charges.

Cross-libel for short delivery.

Bill of Lading on the "Fifeshire," from Glasgow to New Orleans, for one hundred and seventeen tons pig-iron, in the usual form, with the following added: "The said master hereby acknowledging having received the full weight of iron therein specified, the same having been weighed alongside at shipment, and holding himself and the said vessel bound to deliver the same weight of iron, provided it be weighed alongside at discharging.

"No iron to be retained by the vessel. The pig-iron to be taken from alongside and discharged at the rate of two hundred and fifty tons per running day (Sundays excepted), or demurrage to be paid at the rate of twenty-five pounds sterling per day."

At this port (New Orleans) the iron could not be unloaded and piled on the wharf, on account of wharf regulations prohibiting it, so that the ship was obliged to have it trucked across the wharf to *terra firma*, where it was weighed by the customs officers and found to be some thirteen tons short. The cost of the trucking was \$11.70. During the unloading and up to the weighing both the government and the consignees had watchmen employed to watch the iron.

The testimony of the chief officer of the "Fifeshire" is to the effect that he superintended the loading and unloading of the cargo; that all the 117 lot taken aboard was put out; that the vessel had two other large lots of iron aboard, in different holds, and that the 117 lot was separated from the other iron with wood and mats; that he was very particular about keeping the lots separate, because it was a small lot.

The first question to be decided is as to the liability of the consignees for the charge of trucking the iron across the wooden wharf.

The contract specifies that the iron was to be taken from alongside.

Unless this has a meaning outside of the plain signification of the words used, the expense of moving the iron over the wharf to land would fall on the consignees.

They seek to avoid this liability by showing that they could not take the iron until it was weighed, and that it "could not be weighed alongside the ship where it had been discharged."

This, of course, goes for nothing as against the contract of the parties as to where the ship's carriage should cease.

The consignees also urge a custom of the port, as sworn to by two witnesses, in these terms: "The term 'taken from alongside,' in its general acceptance with merchants here, does not mean that the merchant is to take it from within a foot or two of the ship, but that the ship is to deliver on the earthwork as is customary at this port."

The same witnesses say further: "The term 'alongside' has ordinarily been construed here to mean delivery at this port; and as the custom-house authorities require that the cargo shall be delivered on *terra firma*, and as the wharf-

master always insists that the wharf property cannot be jeopardized by the delivery of any heavy weights on the wood-work, a delivery on the earthwork has almost always been customary."

Again, "according to the custom of this port, without presuming to say anything as to the law on the subject, it was the business of the ship to deliver that iron where the custom-house authorities designated."

Conceding such a custom as is described in the testimony of these witnesses to have been proved, it is sufficient to say that—

(a) It is not reasonable; for the customs authorities might designate a particular pair of scales or a particular warehouse for the government weighing;

(b) Custom cannot vary the terms of an unambiguous contract;

(c) To allow such a custom to come in when the parties have specified that the cargo "is to be taken from alongside," would be to render nugatory such clause.

Under the general law, in the absence of a special contract, the carrier could have been required to do no more than consignees claim in this case. See *The Tybee*, 1 Woods, 361; *Dibble v. Morgan*, 1 Woods, 409; and cases cited in *Desty on Shipping*, § 244.

The learned proctors for consignees rely upon the case of *The Delaware*, 14 Wall. 603, where it is said: "Evidence of usage is admissible in mercantile contracts to prove that the words in which the contract is expressed in the particular trade to which the contract refers are used in a particular sense, and different from the sense which they ordinarily import."

But they should have read the next sentence: "Such evidence may be introduced to explain what is ambiguous, but it is never admissible to vary or contradict what is plain."

The contract in this case was that the consignees should take the iron "from alongside."

That undoubtedly and plainly means that they were to take it from where the ordinary appliances of the ship would leave it in discharging,—"at the end of the ship's tackle;" on

- the wharf, if the ship was discharging at a wharf; on a lighter, if the ship could not reach a wharf and was discharging in the stream.

The next question is about the responsibility for short delivery. The bill of lading, *supra*, leaves no doubt as to the quantity of iron received.

The government weighers' certificates leave no doubt as to the quantity of iron received by the consignees.

There is no reason to suppose that the ship delivered more than the consignees received.

No matter where the technical delivery took place, the actual delivery was on the earthwork.

The ship undertook to put the iron there, did so, and has brought her bill for the expense.

To assume that from the "end of the ship's tackle" to the earthwork some of the iron was lost is a gratuitous assumption, wholly unsupported by the evidence.

It is equally idle to suppose that while the iron was watched before weighing it was carried off.

It seems to me much more probable that in spite of the efforts of the chief officer to keep the three lots of iron aboard the "Fifeshire" separate, the said lots did get mixed, and that fourteen tons of the 117 lot were never delivered.

The stipulation in the bill of lading, "holding himself and the said vessel bound to deliver the same weight of iron, provided it be weighed alongside at discharging," might have controlled the ship's liability had it been possible to have weighed the iron alongside. It was not possible to so weigh the iron, and therefore that clause became nugatory, the same as not written, and the general liability of carriers for the non-delivery of freight attached.

Under the evidence there can be no doubt of the short delivery on the 117 tons of iron.

Whether it was not all put aboard, whether it was lost on the voyage, whether it was all discharged, whether it was lost after discharging and before delivery on the earthwork, or whether the ship has some other valid excuse, it is incumbent on the ship's owners to show.

Non-delivery of the goods shipped by a common carrier

makes a *prima facie* case of liability against the carrier. This liability is not avoided by the evidence in this case.

The libellants should recover a balance due for freight, \$269.80, and the charges for trucking the iron, \$11.70 ; but from this amount should be deducted the agreed value of the iron not delivered, \$269.80, and this leaves a judgment for libellants of \$11.70 on the whole case.

The libellants should pay the costs of this court, and the respondents those of the District Court.

So ordered.

ADMIRALTY LAW.

ADMIRALTY · LAW. .

CHAPTER I.

JURISDICTION.

SECTION I. — DISTRICT COURTS.

SECTION 563, paragraph eight, of the United States Revised Statutes, provides that the District Courts shall have jurisdiction of all civil causes of admiralty and maritime jurisdiction; saving to suitors in all cases the right of a common-law remedy, where the common law is competent to give it; and of all seizures on land and on waters not within admiralty and maritime jurisdiction. And such jurisdiction shall be exclusive, except in the particular cases where jurisdiction of such causes and seizures is given to the Circuit Courts. And shall have exclusive and original cognizance of all prizes brought into the United States, except as provided in paragraph six of section 629. (Amended by act of Feb. 18, 1875, ch. 80, 18 Stat. 316.)

Where the admiralty jurisdiction of the United States courts attaches at all, it does so exclusively of the jurisdiction of the State courts.¹

Admiralty jurisdiction is exclusive in the United States courts. A State cannot confer it on State courts.²

¹ The Norfolk and Union, 2 Hughes, 123.

² Stewart v. Potomac Ferry Co., 12 Fed. Rep. 296 (March, 1882).

A District Court of the United States, when acting as a court of admiralty, can obtain jurisdiction to proceed *in personam* against an inhabitant of the United States not residing within the district (within which terms a corporation incorporated by a State not within the district is meant to be included), by attachment of the goods or property of such inhabitant found within the district.¹

The District Court sitting as an admiralty court is a court of record.²

The decision of a court of admiralty, as to whether a vessel is a domestic or foreign vessel, is conclusive in a collateral action.³

Although a libel in admiralty is dismissed for want of jurisdiction, yet the libellant is not liable to an action of trespass by the owners of the vessel that was taken under the warrant.⁴

If the District Court had jurisdiction in admiralty over the parties *in personam*, but proceeded *in rem*, its decree cannot be impeached in a collateral proceeding.⁵

The District Court alone has original jurisdiction in causes of admiralty and maritime jurisdiction. Redress in such causes must be had there or nowhere.⁶

Admiralty jurisdiction as exercised in the federal courts is not as extensive as that exercised by the continental courts organized under and governed by the principles of the civil law.⁷

Various decisions have established that the admiralty

¹ *Atkins v. The Disintegrating Company*, 18 Wall. 272.

² *Ward v. Chamberlain*, 2 Black, 430; *Thompson v. Lyle*, 3 W. & S. 166.

³ *The Rio Grande*, 23 Wall. 458.

⁴ *Thompson v. Lyle*, 3 W. & S. 166.

⁵ *Case v. Woolley*, 6 Dana, 17.

⁶ *Jansen v. The Magdalena*, Bee, 11.

⁷ *The Belfast*, 7 Wall. 624; *Bags of Linseed*, 1 Black, 108.

jurisdiction of the District Courts is not limited to the particular subjects over which the admiralty courts of the parent country exercised jurisdiction when our Constitution was adopted; and, upon the other hand, that it does not extend to all cases which would fall within such jurisdiction, according to the civil law and the practice and usages of continental Europe; but its nature and extent must be determined by the laws of Congress and the decisions of the Supreme Court, and by the usages prevailing in the courts of the States at the time when the federal Constitution was adopted.¹

The practice of the colonial admiralty courts is authority of a very high character upon the question of the extent of the admiralty and maritime jurisdiction.²

The general system of maritime law which was familiar to the lawyers and statesmen of the country when the Constitution was adopted, was intended and referred to when it was declared that the judicial power of the United States shall extend "to all cases of admiralty and maritime jurisdiction."³

The maritime law is operative only so far as it has been adopted by the laws and usages of the country.⁴

In the case of *Tunno v. The Bark Betsina*,⁵ the learned judge well remarks that it aids us very little to determine satisfactorily the true nature and extent of the admiralty and maritime jurisdiction in the courts of the United States, to refer to the opinions of the courts in Great Britain. It is now generally conceded, he says,

¹ S. Ct. 1877, *Ex parte Easton*, 95 U. S. (5 Otto) 68.

² *The Lottawanna*, 21 Wall. 558.

⁴ *Ibid.*

³ *The Kate Tremaine*, 5 Ben. 60;

s. c. 4 Am. L. Times (C. R.), 92; *grath, J.*

Cunningham v. Hall, 1 Cliff. 43;

s. c. 1 Sprague, 404.

⁵ 5 Am. Law Rep. 406, Ma-

that the jurisdiction in this court intended to be exercised in the United States is not limited, as it was known in Great Britain anterior to the Revolution, and as declared by the courts of that kingdom. And he cites the cases of *De Lovio v. Boit*, 2 Gall. 400; *Propeller Genessee Chief v. Fitzhugh*, 12 How. 443.

In cases of admiralty and maritime jurisdiction, the competency of the court does not depend on the citizenship of the parties. The jurisdiction is founded on the subject-matter, and attaches, whoever may be the parties and wherever they may reside.¹

The admiralty courts of the United States have jurisdiction of collisions occurring on the high seas between foreign vessels.²

Torts on the high seas and between foreign subjects may be taken cognizance of in the courts of this country.³

SECTION II. — NAVIGABLE WATERS.

The jurisdiction depends upon the navigable character of the water, and not upon the ebb and flow of the tide. If the water is navigable it is public, and, if public, is within the legitimate scope of the admiralty jurisdiction.⁴

The admiralty jurisdiction extends to the interior navigable rivers of the United States.⁵

The District Courts can take cognizance of all civil

¹ *Peyroux v. Howard*, 7 Pet. 324; 466; *Jackson v. The Magnolia*, 20 The Calisto, 2 Ware, 30; *Zollinger v. The Emma*, 3 Cent. L. J. 285.

² *The Bergenland*, 9 Fed. Rep. 576. ⁵ *Hine v. Trevor*, 4 Wall. 555; *McGinnis v. Pontiac*, 5 McLean, 359; *Eads v. The Bacon*, Newb. 274;

³ *Johnson v. Dalton*, 1 Cowen, 564. *Jackson v. The Magnolia*, 20 How. 296; *Cheeseman v. The Two Ferry Boats*, 2 Bond, 363.

⁴ *Genesee Chief v. Fitzhugh*, 12 How. 443; *Fritz v. Bull*, 12 How.

causes of admiralty jurisdiction upon the lakes and waters connecting them, the same as upon the high seas, bays, and rivers navigable from the sea.¹

The admiralty jurisdiction extends wherever ships float and navigation successfully aids commerce, whether internal or external.²

The admiralty jurisdiction extends to all public rivers as far as they are navigable.³

Those waters are navigable in law which are navigable in fact, and they are public navigable waters in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, over which trade and travel are, or may be, conducted in the customary modes of trade and travel on water.⁴

The liability to temporary interruptions of the navigation of a river does not destroy its character as a navigable stream.⁵

The vital and essential point is, whether the natural navigation of the river is such that it affords a channel for useful commerce. If this be so, the river is navigable in fact, although its navigation may be encompassed with difficulties by reason of natural barriers, such as rapids and sand-bars.⁶

The admiralty jurisdiction of the federal courts extends to navigable waters, though they may be *infra corpus comitatus*.⁷

¹ The Eagle, 8 Wall. 15; Genesee Chief v. Fitzhugh, 12 How. 443; J. 9.

Revenue Cutter No. 1, 1 Brown A. & R. Cases, 76.

² Hine v. Trevor, 4 Wall. 555.

³ The Jenny Lind, Newb. 443; Martin v. Acker, 1 Bl. & H. 279; Huber v. Coal Barges, 3 A. L. T. 109; s. c. 2 C. L. N. 270; Comings

v. The Ida Stockdale, 22 Pitts. L. J. 9.

⁴ The General Cass, 1 Brown, 334; The Montello, 11 Wall. 411.

⁵ Cheeseman v. Two Ferry Boats, 2 Bond, 363; Nelson v. Leland, 22 How. 48.

⁶ The Montello, 11 Wall. 411.

⁷ Waring v. Clarke, 5 How. 441;

The admiralty jurisdiction embraces bays, harbors, and inlets, although they are within the territorial limits of a State.¹

The admiralty has jurisdiction over navigable rivers, although they are wholly within the boundary of a State.²

In June, 1882, the Louisiana Supreme Court rendered a decision (not yet reported), from which I extract the following:—

James Hamilton v. The Vicksburg, Shreveport, and Pacific Railroad Company, No. 1052. Appeal from the District Court, Ouachita Parish. Plaintiff's object is to recover damages exceeding \$12,000, alleged to have been caused him by the defendant corporation, in consequence of an unlawful obstruction on the Bœuf River, a navigable stream, on which plaintiff was running a steamboat.

The answer is a general denial, coupled with the special averment that defendant, incorporated under the laws of the State, had the right of building, repairing, and rebuilding necessary bridges over all streams along its line.

The case was tried by a jury, who found a verdict of \$1,000 in favor of plaintiff; and both parties have appealed.

Now, we hold that under its charter, by which it was empowered and authorized to construct, make, and maintain a railroad from a point on the Mississippi River, opposite Vicksburg, thence west to the line of the State of Texas through to Monroe and Shreveport, the company had the undoubted right to build all the necessary bridges across any navigable stream in the course of its line, and that the legislature had the power to confer such right. "The grant of power to

Phila., W., & B. R. R. Co. v. Tow-boat Co., 23 How. 209; *Jackson v. The Magnolia*, 20 How. 296; *The Commerce*, 1 Black, 574; *Monteith v. Kirkpatrick*, 3 Blatch. 279; *Nelson v. Leland*, 22 How. 48; *Robert v. Skolfield*, 3 Ware, 184; *The*

New World v. King, 16 How. 469; *Thomas v. Gray*, 1 Bl. & H. 493.

¹ *Ware v. Hyer*, 2 Paine, 131; *The Martha Anne*, Olc. 18.

² *Jackson v. The Magnolia*, 20 How. 296; *Taylor v. Harwood*, Taney, 437.

construct a railway between two points carries authority to cross navigable waters, if that is reasonably necessary in the construction of the works." Redfield, page 322, note; 5 Allen, 221.

It is also unquestioned that "the State legislatures have unlimited power to erect bridges and railways, and make any other public works across navigable waters, subject only to the paramount authority of the national government."

Redfield, 323; and Saratoga Railroad Co., 15 Wend. (N. Y.) 113; Gillman v. Philadelphia, 3 Wall. 715; The Wheeling Bridge Case, 18 How. 432; The Blackbird Creek Marsh Company's Case, 2 Pet. 245; Worths v. Junction Railroad Co., 5 McLean, 425.

These principles, resting on foundations of reason as well as of law and authority, giving the right to build necessary bridges, necessarily imply not only the right, but the duty, of the company to keep and maintain them in such repair as the public safety may require. Hence the legal right of the defendant company to rebuild the bridge in question, which had been pronounced unsafe by competent authority.

The delay was caused by accidents and circumstances over which the company had no possible control, and for which it cannot be held responsible in justice or in law. In the case of the Memphis & Ohio Railroad Co. v. Hicks, 5 Sneed (Tenn.), p. 427, it was held that "the provision in the charter of a railway company authorizing it to bridge a navigable stream, provided that the navigation of the stream shall not be obstructed, is not violated by a temporary obstruction of the stream by scaffolding, &c., in the construction of the bridges." The present case presents circumstances clearly entitling the defendant to the protection of the rule of *damnum absque injuria*, and we are therefore compelled to exonerate it from any responsibility for the damages resulting from the temporary obstruction to the navigation of Bœuf River, in its attempt to rebuild a necessary bridge. Ranson v. Labranche, 16 Annual, 121; 11 Annual, 711; 15 Annual, 559; 27 Annual, 442; Weeks, *Damnum Absque Injuria*, par. 48, 49.

This conclusion eliminates from the discussion the question of the damages which plaintiff may or may not have suffered from the obstruction of the river, which is thus shown not to have been unlawful.

It is therefore ordered, adjudged, and decreed that the verdict of the jury be set aside, and the judgment of the lower court annulled, avoided, and reversed, and it is now ordered that plaintiff's demand be rejected and his action dismissed at his costs in both courts.

Honorable Associate Justice Charles E. Fenner read the following opinion on application for rehearing:—

It is proper to state that, in this case, the evidence establishes that Bœuf River, the stream across which the bridge was built, lies, as a navigable stream, wholly within the limits of the State of Louisiana; although the upper portion of the stream itself lies in Arkansas, it is not navigable as high up as the Arkansas line. The authority of Congress over navigable streams is an incident of the power to regulate commerce among the States, and only affects rivers which are highways of commerce between different States. As to streams which are navigable only within the limits of a single State, the authority of its legislature is complete. *Penn. v. Wheeling Bridge Co.*, 18 How. 432; 1 *Redfield on Railways*, § 78, notes, and authorities cited. This makes it clear that in the instant case, the authority derived from the legislative action of the State did not conflict, under any view, with any paramount authority of the federal government.

Rehearing refused.

The admiralty jurisdiction embraces ports and havens as a portion of the high seas.¹

The jurisdiction of the admiralty does not necessarily extend over every stream whose occasional floods or fictitious basins may suffice to float a steamboat.²

¹ *American Ins. Co. v. Johnson*, 1 Bl. & H. 9; *The Lotty*, Olc. 329; *Jr. 58*.
² *Jones v. Coal Barges*, 3 Wall. Borden v. Hiern, 1 Bl. & H. 293.

An artificial canal opened by a State to public use for purposes of commerce, and while in fact used as a highway of commerce between the States, or between foreign countries and the United States, is navigable water, within the meaning of that term as used to define and limit the jurisdiction of courts of admiralty.¹

SECTION III. — MATTERS OF CONTRACT.

The fundamental query is, whether the contract is or is not a maritime contract. If it is, the jurisdiction is asserted; if it is not, the jurisdiction is denied. Whether a contract is maritime or not depends not on the place where the contract was made, but on the subject-matter of the contract. If that is maritime, the contract is maritime.²

The indorsee of a bill of lading may libel the vessel on which goods are shipped, for failure to deliver them, though he be but an agent or trustee of the goods for others, *ex. gr.* the cashier of a bank.³

The jurisdiction in admiralty does not include preliminary contracts merely leading to the execution of maritime contracts.⁴

A contract for the use or rent of libellant's dry dock is a contract maritime in its nature, and consequently cognizable in the admiralty.⁵

Claims for wharfage are cognizable in the admiralty.⁶

A court of admiralty has jurisdiction of an action in

¹ *Malony v. City of Milwaukee*, Mason, 6, 16; *The Crusader*, Ware, 1 Fed. Rep. 611; *The Oler*, 2 Hughes, 12; *The Avon*, 1 Brown, 170.

² *The Vidal Sala*, 12 Fed. Rep. 207, Erskine, D. J., April 24, 1882.

³ *Insurance Co. v. Dunham*, 11 Wall. 1; *The Plymouth*, 3 Wall. 20.

⁴ *The Thames*, 14 Wall. 98.

⁵ *The Essex F. & M. Ins. Co.*, 3

(This was a libel *in rem* for use of dry dock.) *The Steamship Mississippi*, 6 Fed. Rep. 543.

⁶ *Ex parte Easton*, 95 U. S. 68.

collision in which it is sought to recover damages for the loss of life caused by a collision, although it is not certain that a vessel is liable for the loss of life, as it is for the damage to vessel and cargo.¹

Cases arising *quasi ex contractu*, where the transaction in nature and effect appertains to navigation, are cases in admiralty as much as cases depending upon voluntary agreements.²

The true criterion by which to determine whether any water craft or vessel is subject to admiralty jurisdiction, is the business or employment for which it is intended, or is susceptible of being used, or in which it is actually engaged, rather than its size, form, capacity, or means of propulsion.³

Canal-boats employed in transporting goods on navigable waters are subject to the admiralty jurisdiction.⁴

A floating elevator placed upon the hull of a canal-boat, which is used for the purpose of transferring grain from one vessel to another, is subject to the admiralty jurisdiction.⁵

Ferryboats designed for the transportation of persons and property across a navigable river are subject to admiralty jurisdiction.⁶

A scow which is used only in port for carrying bal-

¹ *Ex parte Gordon*, decided November, 1891. Opinion in *The Reporter*, Boston, Mass., April 5, 1882; 16 *American Law Review*, 483. (Since reported in 14 *Otto*, 515.)

² *Banta v. McNeil*, 5 Ben. 74.

³ *The General Cass*, 1 Brown, 334.

⁴ *The Kate Tremaine*, 5 Ben. 60; *The E. M. Chesney*, 8 Ben. 150; s. c. 15 *Blatchf.* 183; *The W. J. Walshe*, 5 Ben. 72; *Van Santwood*

v. The John B. Cole, 4 N. Y. Leg. Obs. 373. *Contra*, *The Ann Arbor*, 4 *Blatchf.* 205; *McCormick v. Ives*, 1 *Abb. Adm.* 418.

⁵ *The Hezekiah Baldwin*, 8 Ben. 556.

⁶ *The Cheeseman v. Two Ferryboats*, 2 *Bond*, 263; *Murray v. The F. B. Nimick*, 2 *Fed. Rep.* 86. *Contra*, *Thackarey v. The Farmer*, *Gilp.* 524.

last to and from a vessel is subject to admiralty jurisdiction.¹

Lighters employed on navigable waters in the carriage of goods to and from vessels are within the jurisdiction.²

A scow which is used in carrying lumber to a vessel is within the admiralty jurisdiction.³

Although *tugboats* are employed in harbor service within the body of a county, yet admiralty has jurisdiction over a collision between them, if they are employed as links of transportation in inter-state commerce.⁴

Coal-barges, which are mere open chests or boxes of small comparative value, and are floated by the stream and sold for lumber at the end of the voyage, are not ships or vessels in the maritime sense of the terms, and are not within the maritime jurisdiction.⁵

Flatboats are not within the admiralty jurisdiction.⁶

Rafts are not the subject-matter of admiralty jurisdiction in cases where the right of property or possession is alone concerned. They are not vehicles intended for the navigation of the sea or arms of the sea. They are not recognized as instruments of commerce or navigation. They are piles of lumber, and nothing more.⁷

A derrick-boat is a subject of a libel in admiralty to recover compensation for salvage services.⁸

¹ *Endner v. Greco*, 3 Fed. Rep. 411.

⁶ *Ibid.*

² *Thackarey v. The Farmer*, Gilp. 524.

³ *The General Cass*, 1 Brown, 334.

⁴ *The Volunteer*, 1 Brown, 159.

⁵ *Jones v. The Coal Barges*, 3 Wall. Jr. 53. (This applies not in some cases. — M. M. C.)

⁷ *Tome v. Four Cribs of Lumber*, Taney, 533; *Jones v. The Coal Barges*, 3 Wall. Jr. 53; *Gastrel v. A Cypress Raft*, 2 Woods, 213; *A Raft of Cypress Logs*, 1 Flippen, 543 (1881).

⁸ *Maltby v. Steam Derrick Boat*, 3 Hughes, 477.

Boats employed in the neighborhood of a city, in carrying produce to the market, are subject to the admiralty jurisdiction.¹

Services to stationary docks are not the subject of salvage compensation, nor are they of maritime or admiralty jurisdiction.²

The case just cited was a libel *in personam* for salvage, or for services claimed to be in the nature of salvage services. Judge Dillon, in delivering the opinion of the Circuit Court, said :—

The law of salvage grows out of navigation, and is intended to promote the interests of those engaged in navigating vessels which are the instruments of commerce and trade, and of those whose property is exposed to the perils of the sea, by awarding liberal compensation to the persons by whose assistance such property is rescued from impending peril or saved after actual loss. Abbott on Shipping, 554. And because such services are connected with navigation and commerce or trade, the court of admiralty has jurisdiction to fix the amount of compensation and to enforce a maritime lien therefor; and such jurisdiction and lien are necessary, because the owners of the property saved may be unknown, or distant, or irresponsible. No such reason or necessity exists in respect to fixed structures, such as these docks. In denying salvage compensation for taking up and securing rafts afloat in public navigable waters, Chief Justice Taney uses language which applies here. He says, rafts “are not vehicles intended for the navigation of the sea, or the arms of the sea; they are not recognized as instruments of commerce or navigation by any act of Congress; they are piles of lumber and nothing more, fastened together and placed upon the water until suitable vehicles are ready to receive and to support it to its destined port. And any assistance rendered to these rafts, even when

¹ Reppert v. Robinson, Taney, 492; The Elmira Sheppard, 8 Blatchf. 341. tional Dock Co., Central Law Journal, 640 (St. Louis, Oct. 6, 1878), not published in Dillon's Reports.

² Salvor Wrecking Co. v. Sec-

in danger of being broken up or swept down the river, is not a salvage service, in the sense in which that word is used in the courts of admiralty." *Tome v. Four Cribs of Lumber*, Taney, 533.

Assuming that the allegations of the libel are broad enough to justify the court in treating the libel as one to enforce a contract, or to recover compensation upon general principles for the services rendered in raising the docks, I am of opinion that the contract or services do not relate to the navigation, business, or commerce of the sea or public navigable waters, in such a sense as to make the contract or services maritime. The admiralty jurisdiction and the peculiar liens, rights, and remedies which the admiralty recognizes and enforces, spring out of the movable character of the vessels and vehicles which are the instruments of navigation, commerce, and trade. None of the reasons upon which this jurisdiction is founded, and these rights and remedies are given, apply to the stationary docks here in question; and my best judgment is that the controversy between these parties belongs to the courts of common law, and not to the court of admiralty.

The decree below against the dock company is reversed, and the libel dismissed as to all the respondents; but as the question of jurisdiction was not raised until after the proofs were taken, each party must bear the costs he has incurred, except that the costs in this court must be paid by the libellants.

On this decision the editor of the "Central Law Journal" makes a note, which is so valuable that I append it in its entirety:—

NOTE. — By the general admiralty law, maritime contracts include maritime services in *building*, repairing, supplying, and navigating ships, and the admiralty jurisdiction in the United States extends to all maritime contracts; *i. e.*, contracts which relate to the navigation, business, or commerce of the sea. *De Lovio v. Boit*, 2 Gall. 398, 475. The settled doctrine in this country is, that the admiralty jurisdiction extends to all maritime contracts, and "whether a contract be

maritime or not depends not on the place where the contract was made, but on the *subject-matter* of the contract; . . . the true criterion is the nature and subject-matter of the contract, as to whether it is a maritime contract, having reference to maritime service or maritime transactions." *Insurance Co. v. Dunham*, 11 Wall. 26, 29.

A contract for *building* a vessel was held to be not a maritime contract, because made on land and to be performed on land. *Ferry Co. v. Beers*, 20 How. 393, 401. But this decision is not to be extended by implication. *Insurance Co. v. Dunham*, 11 Wall. 28. Locality of the place where made, as a test of the maritime nature of contracts, is rejected in this country. A ferryboat on the Ohio River may be the subject of a salvage service. *The Cheeseman v. Two Ferry Boats*, 2 Bond, 363. The learned Judge Leavitt in that case expressed the opinion that salvage service could not be restricted to a service rendered to a vessel or the cargo of a vessel, but extended to all cases where valuable property is adrift or afloat, and is rescued from peril on any water over which the admiralty jurisdiction extends. *Ib.* pp. 372-376. This view he considered to find support in the decisions in which steamboats have been libelled in admiralty for injuries to flatboats and their cargoes, of which *Fritz v. Bull*, 12 How. 466; *Culbertson v. Shaw*, 18 How. 585; and *Nelson v. Leland*, 22 How. 48, are mentioned as examples. And he adds: "If, in collision cases, jurisdiction in admiralty can be maintained, when the injury is not to a vessel or the cargo of a vessel [not required to be enrolled or licensed], it results inevitably that it may be maintained for a salvage service in saving property not within either of those categories." And he supports his conclusions by pointing out the inadequacy of the drift laws of the States. Judge Nelson was inclined to regard a *canal-boat* as not being a boat or vessel, though upon navigable waters, in such a sense as to subject it to a maritime lien for breach of a contract of affreightment. *The Ann Arbor*, 4 Blatchf. 205 (1858). See similar view, *Buckley v. Brown*, 3 Wall. 199 (1856), per Grier, J.; *Jones v. Coal Barges*, 3 Am. Law Reg. 391. But a lighter was held to be subject to the

admiralty jurisdiction. The General Cass, 4 Ch. Legal News, 89. So a ferryboat. The Cheeseman v. Two Ferry Boats, 2 Bond, 363.

The claim of the owner of a ship-yard in hauling up a vessel on his ways, and for the use of the ways, is a claim of a maritime nature, enforceable in admiralty. Wortman v. Griffith, 3 Blatchf. 528 (1856), Nelson, J. But see previous case of Ransom v. Mayo, 3 Blatchf. 70 (1853), where the admiralty was held not to have jurisdiction of a claim by the owner of the vessel against the owner of the ways, for the negligence of the latter in hauling the vessel up on the ways.

A dismantled steamboat fitted up for a saloon is not a subject of admiralty jurisdiction. The Hendrik Hudson, 6 Ben. 419.

A barge adrift is subject of salvage service. Seven Coal Barges, 2 Biss., 297. So of a box of bullion. A Box of Bullion, 1 Sprague, 57.

A maritime lien cannot exist upon a bridge; and the opinion was expressed in a libel *in rem* against a bridge for a maritime tort, that a lien "could only exist upon movable things engaged in navigation, or upon things which are the subject of commerce on the high seas or navigable waters, such as vessels, steamers, and rafts, and upon goods and merchandise carried by them, but not upon anything fixed and immovable, like a wharf, a bridge, or real estate of any kind." The Rock Island Bridge, 6 Wall. 213. But a vessel injured by any obstruction in navigable waters may sue *in personam* in the admiralty, — locality giving the jurisdiction in cases of maritime torts. Atlee's Case, 21 Wall. 389. In Tome v. Four Cribs of Lumber, Taney, 533 (1853), it was held by Taney, Ch. J., that taking up and securing rafts afloat in public navigable waters was not a salvage service, but rather in the nature of a mere finding, citing Nicholson v. Chapman, 2 H. Black. 254, relating to a quantity of lumber, and in which salvage was denied, and The Uduon (a flatboat), 2 Hagg. 3. One ground of the decision of Taney, Ch. J., was, that rafts "are not vehicles intended for the navigation of the sea, or the arms of the sea; they are not recognized as instruments of commerce or navigation by any act of Congress; they are

piles of lumber and nothing more, fastened together and placed upon the water until suitable vehicles are ready to receive and transport it to its destined port. And any assistance rendered to these rafts, even when in danger of being broken up or swept down the river, is not a salvage service, in the sense in which that word is used in the courts of admiralty." As to rafts, see 1 Abb. Adm. 485; 2 Wm. Rob. 251.

The jurisdiction of the District Court over a case of salvage service on the Mississippi River is not questioned by counsel, and does not admit of question. *Seven Coal Barges*, 2 Biss. 297, 300, citing *The Genessee Chief*, 12 How. 443. *The Hine v. Trevor*, 4 Wall. 555. *The Tug Eagle*, U. S. Sup. Ct. 1869-70.

Coal barges adrift on the Ohio may be the subject of salvage service. *Seven Coal Barges*, 2 Biss. 297 (Drummond, J., Davis, J., concurring).

"The object of the law of salvage is to promote commerce and trade, and the general interests of the country, by preventing the destruction of property, and to accomplish this by appealing to the personal interest of the individual as a motive of action, with the assurance that he will not depend upon the owner of the property he saves for the measure of his compensation, but to a court of admiralty, governed by principles of equity." Per Drummond, J., *Seven Coal Barges*, 2 Biss. 297, 302 (1870).

In the case of *Edmond L. Cope et al. v. Vallette Dry Dock*, No. 11,802 of the docket of the United States District Court for the District of Louisiana, in a cause of salvage, I filed, on 23d December, 1881, a plea to the jurisdiction, on the following grounds:—

That any assistance rendered to their dry dock is not a salvage service in the sense in which that word is used in courts of admiralty:—

That the Vallette dry dock is not manned by a master and crew, and is not devoted to the purposes of transportation and commerce, or to either:—

That the said dry dock is not a vehicle intended for, or capable of, navigation:—

That such structures as this dry dock are not recognized as instruments of commerce or navigation by any act of Congress:

That said dry dock is not registered, or enrolled, or licensed, or required by any law to be either of these:—

That said dry dock is nothing more than pieces of lumber fastened together and placed upon the water to receive vessels for repair, and having engines used not for purposes of locomotion from one wharf or port to another, of which change of place by her own resources this dry dock is incapable, but solely to lower and elevate said dock in order to receive vessels for repair:—

That said dry dock was, at the date when said salvage services are in said libels alleged to have been rendered, used solely in the business of docking and repairing vessels, and has always been so employed, and not otherwise:—

That said dry dock, at the time of the alleged salvage services, was moored and lying at its usual place where it has been located ever since the latter part of the year 1866, and where it now is:—

That the business and employment for which it was and is intended, and was and is susceptible of being used, and in which it has been actually engaged ever since it was constructed, and its form, capacity, and want of means of propulsion, all render it not subject to admiralty jurisdiction in a cause of salvage, civil and maritime:—

That it has never been engaged in commerce or navigation, and is not capable of being employed in either:—

That from its purpose and business it is not an instrument of naval transportation.

Upon this plea, the judge of that court (the Hon. E. C. Billings) rendered the following decision : —

This case has been heard upon a plea to the jurisdiction. The question submitted is, whether the thing libelled is of such a nature or character as to make it subject to a salvage in the sense in which that word is used in admiralty.

The subject of this libel is a dry dock, — a floating dock, — susceptible of elevation or depression in the water by means of pumping out or in the water. Its design and use is to be sunk under a vessel and then to be pumped out, so as to become dry, leaving the vessel in a position to be inspected and repaired. It is incapable of self-propulsion, cannot be propelled except when towed, and was permanently moored in the Mississippi River by means of enormous chains, at a point opposite the city of New Orleans. The libel alleges the dock had been run into, was sinking, and was saved.

The question turns entirely upon the meaning of the expression “admiralty and maritime jurisdiction,” in the provision of the Constitution of the United States (art. 2, § 3) which creates the judicial power, and in the ninth section of the Judiciary Act of 1789, which delegates that power to the District Courts.

It has been laid down by Chancellor Kent and Justice Story, and is affirmed by the Supreme Court in *Insurance Co. v. Dunham*, 11 Wall. 1, and *Ex parte Easton*, 5 Otto, 68, that this jurisdiction means that jurisdiction which had been and was being exercised in admiralty in this country prior to and at the time of the adoption of the Constitution, and not the jurisdiction of England, nor that of continental Europe. So far as extent of locality is concerned, in the courts of the United States, it comprised the navigable waters of the nation as well as the high seas.

As to what was included within this jurisdiction, my own opinion is that we can most safely look to the commissions of the judges in admiralty before and at the time of the Revolution. A number of these commissions are given *in extenso* in Benedict's Admiralty, ch. 9. Nine commissions show what

contracts are included in that jurisdiction : namely, charter-parties, bills of lading, policies of insurance, &c. ; they show that locally it included the sea, public streams, &c. ; what torts were included within it ; and, lastly, what can be the subject-matter of salvage ; for beside everything pertaining directly to a ship, or things used in navigation, they add : “ And also of and concerning all casualties at sea, goods wrecked, flotsam, jetsam, ligan, shares, things cast over-board, and wreck of the sea, and all things taken or to be taken, as derelict, or by chance found or to be found.”

If one was most laboriously to prepare from all the admiralty reports which have been acquiesced in an enumeration of the things which can be subjected to a claim for salvage, it could scarcely be more exact. It is to be seen that it includes the vessel or ship, wrecked goods, goods which float away or are cast away, or which sink from the ship, and to this enumeration are added derelict things and things found.

The reason of this precise discrimination is, that with the exception of derelict and things found, and the ship, her cargo and freight, there could be no basis in reason for a lien which must exist in order to support a libel *in rem*. The ship, and all things which pertain to it, is in the law of admiralty clothed with personality, so far as responsibility goes. Those who repair or loan upon her, or equip or man her, and those who deal with her, and those who are injured by her, and those who save her, look to her. The reason of this is that she was often far distant from her home and owners, and commerce was vastly facilitated by the law thus endowing her with the attributes of a person. This is the origin of the maritime law, and by this it is to be measured — so measured in cases of salvage — it included the ship's apparel, tackle, money, freight, cargo ; and here it stopped, for the necessities of commerce did not require that anything else should be clothed with, so to speak, capacity to subject itself to pecuniary responsibility ; the salvage allowed derelict and “ found ” property, being allowed from a different reason, namely, as an incentive to save property abandoned to destruction from the elements upon the broad ocean.

I think the commissions of the colonial admiralty judges, the history of our admiralty jurisprudence, and an application of principles to facts, all lead to the recognition of this test as being the true one. Judged by it, the object here libelled, the dry dock, is not the subject of admiralty or maritime jurisdiction for salvage.

The manner of arriving at a solution of the question before the courts renders it unnecessary to comment upon the cases which have been cited, further than to say that in all the cases decided by courts of the United States, where salvage has been allowed, the property salvaged was either the ship, her cargo and freight, or derelict, or property found upon the navigable waters, and in all the cases where it has been disallowed the property salvaged was neither. I except the case of *Four Cribs of Lumber*, Taney, 533, where the usages of the lumber business seem to have controlled the court.

The plea to the jurisdiction is maintained, and the libel dismissed.

See *The Hendrik Hudson*, 3 Ben. 419; *The Salvor Wrecking Co. v. Sectional Dry Dock Co.*, Judge Dillon (unreported); *Thackarey v. The Farmer*, Gilpin, 524; *The Belfast*, 7 Wall. 637; 1 Conkling's Adm. p. 8; *Fifty Thousand Feet of Lumber*, 2 Lowell, 64; *A Raft of Logs*, 1 Abb. Adm. 485; *Twenty-three Bales of Cotton*, 7 Ben. 48; *Four Cribs of Lumber*, Taney, 533.

Since I prepared the above, the foregoing decision has been reported by my esteemed friend, Joseph P. Hornor, Esq., of the New Orleans Bar, in the *Federal Reporter*, vol. x. No. 1, Feb. 21, 1882, p. 142. With this number of one of the best law periodicals, namely, the *Federal Reporter*, begin the valuable services of Robert Desty, Esq., as editor. He is a justly popular author of admirable law-books.

Cope *et al.* prayed the United States Supreme Court for a writ of *mandamus* to the District Court to order that court to take jurisdiction and proceed with the cause.

About the 10th of April, 1882, the Supreme Court refused the *mandamus*.

Subsequently Cope *et al.* libelled the Vallette Dry Dock Company *in personam* for the same cause of action as in their libel *in rem*.

I again pleaded to the jurisdiction on the ground that the dry dock is not a subject of admiralty or maritime jurisdiction for salvage.

After argument, the District Court sustained my plea to the jurisdiction in the suit *in personam*.

Libellants took an appeal to the Circuit Court, returnable to the November term, 1882. Said appeal is still pending at the time of this writing.

The dry dock of libellant floating in the Delaware, moored to a wharf, having been injured by the negligence of respondent's tug, *held*, that the jurisdiction of the court of admiralty attached.¹

Admiralty has no jurisdiction of a claim for injury by a schooner to a derrick on a pier, the damage not being done upon the water.²

Where, although the origin of the wrong is on the water, the consummation and substance of the injury are on the land, the admiralty has no jurisdiction.³

The District Court can adjudicate upon matters of salvage as well in a proceeding *in personam* as *in rem*.⁴

A maritime lien may be enforced in a court of admiralty by a proceeding *in personam* against the party who holds the property or proceeds, if they have passed into the hands of third persons.⁵

¹ The Ceres, 10 Central Law Jour. 113.

⁴ The Centurion, 1 Ware, 477.

² The Schooner Maud Webster, 675; Cutler v. Rae, 7 How. 729.

⁵ Sheppard v. Taylor, 5 Pet.

8 Ben. 547.

³ Ibid. p. 552, and cases there cited.

Courts of admiralty have always been in the habit of entertaining suits between foreigners in cases of salvage.¹

Causes of collision are *communis juris*, and admiralty has jurisdiction to entertain the suit between two foreign vessels.²

The question of jurisdiction is seldom raised or regarded in salvage cases, because salvage arises under the *jus gentium*, and does not ordinarily depend on the municipal laws of particular countries. The courts take cognizance of those cases as matters of course, if either party and the property are territorially within their jurisdiction, although the salvors and claimants are aliens.³

Admiralty Jurisdiction. Suit in Rem. — In a suit *in rem* in admiralty against a vessel, an actual seizure is necessary to confer upon the court jurisdiction over the vessel.⁴

A suit on a bottomry bond, except in certain cases, must be by proceedings *in rem* against the property hypothecated or the proceeds, as prescribed by admiralty rule 18, and a libel *in rem* may be a proceeding against the property by arrest or attachment; but it does not follow that an attachment can only be made by actually taking possession of the property; service may be made either by notice or by actual levy on the goods. Service by notice and monition is analogous to

¹ *Mason v. The Blaireau*, 2 W. Rob. 35; *The Luna v. The Belgenland*, The Reporter (Boston), vol. 332; *One Hundred and Ninety-four Shawls*, 1 Abb. Adm. 317; *The Sailor's Bride*, 1 Brown, 681; *The Maggie Hammond*, 9 Wall. 435.

² *Abbott's Law of Merchant Ships and Seamen*, 579 (12th edition, London, 1881, by S. Prentice, Q. C.); *The Johann v. Friederich*, 1

³ *One Hundred and Ninety-four Shawls*, 1 Abb. Adm. 317; *The Bee*, 1 Ware, 332.

⁴ *Brennan v. The Steam Tug Anna P. Dorr*, 4 Fed. Rep. 459 (1880).

the process of garnishment, and a good attachment of the proceeds in whatever form they may exist.¹

In *Miller v. United States*, 11 Wall. 294, it is said: "In revenue and admiralty cases a seizure is undoubtedly necessary to confer upon the court jurisdiction over the thing when the proceeding is *in rem*. In most of such cases the *res* is movable personal property, capable of actual manucaption. Unless taken into actual possession by an officer of the court, it might be elained before a decree of condemnation could be made, and thus the decree would be ineffectual. It might come into the possession of another court, and thus there might arise a conflict of jurisdiction and decision, if actual seizure and retention of possession were not necessary to confer jurisdiction over the subject."

SECTION IV. — PLEA TO THE JURISDICTION.

If a fact which affects the jurisdiction of a court does not appear on the face of the libel, it should be specially stated either in a plea or answer.²

When a plea to the jurisdiction of the court is overruled, the question whether the respondent shall be permitted to answer the allegations of the libel is one of discretion with the court.³

The question of jurisdiction is open at any stage of the proceedings until final hearing.⁴

Where the court has no jurisdiction over the case, advantage may be taken of this defect at any stage of the proceedings, if the libel does not aver the facts necessary to give jurisdiction.⁵

¹ *Snow v. Tons of Scrap Iron*, 11 Fed. Rep. 517.

² *Knight v. The Attila, Crabbe*, 326.

³ *The Sea Gull, Chase*, 145.

⁴ *Ward v. Thompson*, Newb. 195; s. c. 22 How. 330; *Peyroux v. Howard*, 7 Pet. 324.

⁵ *The Washington*, 4 Blatchf.

101.

A plea to the merits is an admission that the jurisdiction of the court is well founded, and a decree on the merits cannot afterwards be arrested unless the defect of jurisdiction is apparent on the face of the record.¹

If the libel avers that the seizure was made on a navigable water, and the claimant desires to raise the question of jurisdiction, he must traverse the allegation of the place of seizure by a plea.²

A State court may entertain an action by a salvor to recover compensation for salvage services, where there has been an express promise to pay for them.³

A State court may entertain a bill in equity to redeem goods from a lien claimed on account of an alleged salvage service.⁴

The question as to the true limits of admiralty jurisdiction is exclusively a judicial question, and no State law or act of Congress can make it broader than the judicial power may determine those limits to be.⁵

SECTION V.—CIRCUIT COURTS.

The act of March 3, 1875, ch. 137, § 1 (18 Stat. 470), provides that the Circuit Courts shall also have appellate jurisdiction from the District Courts under the regulations and restrictions prescribed by law.

Section 631 of the United States Revised Statutes provides that the Circuit Court shall have jurisdiction from all final decrees of a District Court in causes of equity or of admiralty and maritime jurisdiction, ex-

¹ *The Abby*, 1 Mas. 360.

⁴ *Cashmere v. De Wolf*, 2 Sandf.

² *United States v. Two Hundred* 379.

and Fifty Barrels, Chase, 502.

⁵ *The Lottawanna*, 21 Wall. 558;

³ *Albany City Insurance Co. v. The St. Lawrence*, 1 Black, 522.

Whitney, 70 Pa. St. 248.

cept prize causes, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, an appeal shall be allowed to the Circuit Court next to be held in such district, and such Circuit Court is required to receive, hear, and determine such appeal.

Objections to the jurisdiction of the Circuit Court, when they go to the subject-matter of the controversy and not to the form merely of its presentation, or to the character of the relief prayed, may be taken at any time. They are not waived because they are not taken in the Circuit Court.¹

SECTION VI. — SUPREME COURT.

The agreement of the parties cannot authorize the Supreme Court to revise a judgment in any other mode of proceeding than that which the law prescribes, for it cannot give jurisdiction to the Supreme Court. Its appellate power is regulated and limited by law.²

The Supreme Court has jurisdiction of an appeal in admiralty, although the Circuit Court affirmed the decree of the District Court *pro forma* because the judge had been counsel for one of the parties.³

By sections 690 and 691 of the Revised Statutes of the United States (as amended by the act of Feb. 16, 1875, ch. 77, § 33, 18 Stat. 316), it is provided that the Supreme Court shall have appellate jurisdiction of all final judgments of any Circuit Court removed there by appeal, where the matter in dispute, exclusive of costs, exceeds the sum or value of five thousand dollars.

A judgment against a defendant is *prima facie* the

¹ *Boom Company v. Patterson*, Nonesuch, 9 Wall. 505; *The Alicia*, 98 U. S. 403. ² 7 Wall. 572.

³ *The Lucy*, 8 Wall. 307; *The Oregon v. Rocca*, 18 How. 570.

measure of the jurisdiction in his behalf, and this *prima facie* case continues until the contrary is shown.¹

By "matter in dispute" is meant the subject of litigation, the matter for which the suit is brought, and upon which issue is joined, and in relation to which jurors are called and witnesses examined.²

For further on jurisdiction, see "Appeals," "Interest," "Costs."

SECTION VII. — SOURCES OF ADMIRALTY LAW.

See Erskine's Institutes (7th ed.), p. 33, book 1, tit. 3, § 18.

The decision of the court of admiralty is based on the law of nations.³

The peculiar law which admiralty courts administer is, first, the maritime law of the world,—that law which in the sense of the Roman law is *jus gentium*. The Romans did not mean by *jus gentium* what we call the law of nations,—that is, law which regulates the rights and duties of nations in respect to each other; but they meant those laws found in all nations, and substantially the same in all.⁴

Another source of admiralty law is the decisions of the courts of admiralty and common law, on maritime questions, and, in the United States, the acts of Congress.⁵

SECTION VIII. — PRINCIPAL SUBJECTS OF ADMIRALTY JURISDICTION.

The principal subjects of admiralty jurisdiction are maritime contracts and maritime torts, including cap-

¹ Troy v. Evans, 97 U. S. 1.

⁴ Curtis's Lectures, 277 (Boston,

² Lee v. Watson, 1 Wall. 337.

1880).

³ Wheaton, Law of Nations, 211.

⁵ Ibid. 278, 279.

tures *jure belli*, and seizures on water for municipal and revenue forfeitures.

1. Contracts, claims, or services purely maritime, and touching rights and duties appertaining to commerce and navigation, are cognizable in the admiralty.¹

2. Torts or injuries committed on navigable waters, of a civil nature, are also cognizable in the admiralty courts.

Jurisdiction in the former case depends upon the nature of the contract, but in the latter it depends entirely upon locality. Mistakes need not be made if these rules are observed; but contracts to be performed on waters not navigable are not maritime, any more than those made to be performed on land. Nor are torts cognizable in the admiralty, unless committed on waters within the admiralty and maritime jurisdiction, as defined by law.²

SECTION IX. — SPECIAL SUBJECTS OF ADMIRALTY JURISDICTION.

The admiralty has exclusive jurisdiction as to mariners' wages, where they proceed *in rem*.³

A contract to carry merchandise on the navigable waters of the United States is within the admiralty jurisdiction.⁴

A bill of lading is within the admiralty jurisdiction.⁵

This principle applies to passengers.⁶

¹ Conkling's Adm. 19; The Belfast, 7 Wall. 637.

² The Commerce, 1 Black, 579; 2 Story on the Constitution (3d ed.), §§ 1666-1669; The Belfast, *ubi supra*.

³ Leon v. Galceran, 11 Wall. 185.

⁴ The New Jersey Steamboat

Co. v. The Merchants' Bank, 6 How. 344; Morewood v. Enequist, 23 How. 491; The Belfast, 7 Wall. 624; but not within ports of the same State, Maguire v. Card, 21 How. 248.

⁵ The Gold Hunter, Blatchf. & Howl. 300.

⁶ The Moses Taylor, 4 Wall. 411.

Over pilots and pilotage, admiralty has jurisdiction.¹

Claims for pilotage fees are within the jurisdiction of the admiralty.²

Those who furnish repairs and materials to vessels in a foreign port have a lien on a vessel enforceable in admiralty.³

But liens depending upon State laws, and not arising out of the maritime contract, are left to be enforced by the State courts.⁴

Cases of domestic ships for supplies, repairs, or other necessities proceed *in personam*, but not *in rem*. (See Admiralty Rule 12; 21 How. iv.)

Admiralty has jurisdiction over bottomry and respondentia bonds.⁵

If a bond is oppressive from exorbitant interest, &c., or bad in itself, the court of admiralty can give protection and relief from it.⁶

Policies of insurance are within the admiralty jurisdiction.⁷

An insurer may libel for premium.⁸

Admiralty has jurisdiction over jettison and general average contributions.⁹

In a case of general average, where the consignee has received his goods and given a general-average bond, the United States Admiralty Court, under later decisions of the United States Supreme Court, has ju-

¹ Hobart v. Drogan, 10 Pet. 108.

² *Ex parte Hagar*, U. S. Supreme Court, November, 1881; The Reporter, vol. xiii. No. 14, p. 419 (Boston, 1882).

³ The Belfast, 7 Wall. 624.

⁴ Maguire v. Card, 21 How. 251.

⁵ Curtis's Lectures, 261; The Brig Draco, 2 Sumn. 157.

⁶ Handbook of Average, by Manley Hopkins, p. 90, 3d ed.

⁷ Insurance Co. v. Dunham, 11 Wall. 1.

⁸ The Dolphin, 1 Flippen, 580.

⁹ Insurance Co. v. Dunham, *ubi supra*; Dupont de Nemours & Co. v. Vance et al., 19 How. 162.

jurisdiction of an action on such bond, notwithstanding the opinion in *Cutler v. Rae*, 7 How. 729.¹

Salvage services are of admiralty cognizance. (See my chapter, title SALVAGE.)

The contract of ransom is also within admiralty jurisdiction.

Admiralty has jurisdiction of surveys; as, where a regular survey is required by the terms of a policy of insurance, or where freighters and seamen claim discharge of contract because the vessel is unseaworthy.²

Admiralty has jurisdiction over petitory and possessory actions.³

Surrender of interest in the vessel and freight, as provided by sections 4283 *et seq.* of the United States Revised Statutes, may be received by the admiralty courts, and they may appoint trustees and distribute the fund.⁴

Torts on the high seas or navigable waters of the United States are within the admiralty jurisdiction, as I have herein above stated, citing *The Belfast*, 7 Wall. 624.

Under the head of Torts are included personal assaults and batteries, collision, and spoliations by force;⁵ and cases where war-vessels have increased their force here contrary to our rights and duties as neutrals.⁶

¹ *Bark San Fernando v. Jackson & Manson*, 12 Fed. Rep. 341, by Pardee, Ct. J., March 18, 1882 (reported by Joseph P. Hornor, Esq., of the New Orleans Bar); citing *Dike v. St. Joseph*, 6 McLean, 573; *Insurance Co. v. Dunham*, 11 Wall. 1; *Gloucester Insurance Co. v. Younger*, 2 Curt. 334.

² *Masonaire v. Keating*, 2 Gall. 336.

³ *Dorr v. Pacific Insurance Co.*, 7 Wheat. 581; *Janney v. Columbian Insurance Co.*, 10 Wheat. 412; U. S. Rev. Stat. 4556 *et seq.*

⁴ *Ward v. Peck*, 18 How. 267; *The Steamboat Orleans v. Phœbus*, 11 Pet. 175, where Phœbus, part owner, sued the other part owners for a sale, which the court refused, and held that the majority may employ the vessel, giving stipulation for her safe return; if the majority decline, the minority may do so, on like terms.

⁵ *The Norwich Co. v. Wright*, 13 Wall. 104.

⁶ *Curtis's Lectures*, 268, 269.

⁷ *Ibid.* 270.

The United States District Courts have also jurisdiction of revenue seizures.¹

Informations filed by the district attorney to enforce forfeitures are within the jurisdiction of the admiralty.²

The District Court has also the entire prize jurisdiction.³

In *Jennings v. Carson*, 4 Cranch, 2, Marshall, Ch. J., delivering the opinion of the court, said the court is not of opinion that the Prize Acts of Great Britain confer entirely new powers on the courts whose practice they regulate.

In *Brown's Civil and Admiralty Law*, in his chapter on the jurisdiction of the prize courts, it is expressly stated that those courts exercised their jurisdiction anterior to the Prize Acts; and the same opinion is expressed by Lord Mansfield in the case of *Lindo v. Brown*, Douglas, 613, n.

By section 563 of the United States Revised Statutes the District Courts have jurisdiction of all crimes and offences cognizable under the authority of the United States, committed within their respective districts, or upon the high seas, the punishment of which is not capital, except in the cases mentioned in section 5412, title CRIMES. §§ 4300-4305.

By section 629 of the United States Revised Statutes, nineteenth paragraph, the Circuit Court of the United States has jurisdiction of all suits and proceedings arising under section 5344, title CRIMES, for the punishment of officers and owners of vessels, through whose negligence or misconduct the life of any person is destroyed.

¹ *Whelan v. The United States*, 3 Dall. 297; *The Sally*, 27 Cranch, 112.

geance, 3 Dall. 297; *The Sally*, 27 Cranch, 112.

² *The United States v. La Ven-*

³ *Curtis's Lectures*, 272.

By the twentieth paragraph of the same section the Circuit Court has exclusive cognizance of all crimes and offences cognizable under the authority of the United States, except where it is or may be otherwise provided by law, and concurrent jurisdiction with the District Courts of crimes and offences cognizable therein. (See U. S. Rev. Stat. §§ 730, 731.)

That learned and able writer, E. C. Benedict, LL.D., in his admirable work on the American admiralty (1870), in section 570, says, the grant in the Constitution of judicial power to the government of the United States in all cases of admiralty and maritime jurisdiction is without limitation, and of course embraces criminal as well as civil cases.

Courts of admiralty have no jurisdiction over national vessels of war commissioned by the government of a foreign State.¹ [But see page 29, last paragraph.]

A libel *in personam* for damages received by a person who had gone on board a vessel moored at a wharf, for the purpose of ascertaining whether he had a consignment by such vessel, it being customary with the officers to allow parties to come on board for such purposes, and who had been injured by a bale of cotton being negligently allowed to fall on him, is a maritime tort, and cognizable in the admiralty.²

The court of admiralty has jurisdiction in cases of personal injuries on the voyage, and in cases of injuries by collision of vessels.³

And it is the only tribunal sitting in countries under

¹ The Constitution, The Law vol. iv. No. 3, p. 777, October Reports, Probate Division, vol. iv. Term, 1881.
p. 39 (1879).

² 2 Wait's Actions and Defences,

³ Leathers v. Blessing, Morrison, 98; The Thames, 5 Rob. Adm. 848; Transcript of the Decisions of the Waring v. Clarke, 5 How. 441.
Supreme Court of the United States,

the dominion of the common law which can ordinarily administer a remedy *in rem*, and hold the offending vessel itself liable for the payment of the damages.¹

Admiralty has jurisdiction of an action *in rem* to recover damages for death of a passenger caused by fault or neglect of master and mariners.²

So, of a libel for damages for death of chief mate of a vessel, caused by a collision.³

A parent may maintain a libel in admiralty for the wrongful abduction and carrying to sea of a son.⁴

A ship-owner is liable for such tort of the master, where the master is in command of the vessel as the agent of the owner.⁵

See Notes of Constitutional Decisions, by Orlando F. Bump, New York, 1878, pp. 268-272.

Admiralty courts have jurisdiction in a cause of possession, to take a ship from a wrong-doer, and deliver her over to a person claiming as the right owner.⁶

For jurisdiction as to wharfage, see *Brock v. The John M. Walsh*, 24 Int. Rev. Rec. 207; *The J. H. Stearin*, 15 Blatchf. 473.

Claims for wharfage arising out of either an express or an implied contract are cognizable in admiralty.⁷

The admiralty has jurisdiction of a contract made between the master of a ship and a cooper, to put the

¹ 2 Wait's Actions and Defences, 98; *The Moses Taylor*, 4 Wall. 411; *The Hine v. Trevor*, 4 Wall. 555. See *Baird v. Daly*, 57 N. Y. (12 Sick.) 236; *The General Buel*, 18 Ohio St. 521; *Ex parte Gordon*, 14 U. S. 515 (November, 1881); *The Reporter*, vol. xiii. No. 14, p. 417 (Boston, 1882).

² See *Rusk v. The Charles Morgan*, 18 Am. L. Reg. 624.

³ *Coggins v. Helmsley*, 23 Int. Rev. Rec. 381.

⁴ *Tillmore v. More*, 4 Fed. Rep. 231.

⁵ *Ibid.*

⁶ *In re Blanchard*, 2 B. & C. 244; 3 D. & R. 177; 8 Jacob's Fisher's Digest, p. 12,708; *Thurber v. The Fannie*, 8 Ben. 429.

⁷ *Ex parte Easton*, 95 U. S. R. S. C. (5 Otto) 68.

cargo of the ship in landing order, the services being rendered partly on the ship and partly on the wharf, but before the delivery of the cargo.¹

In a proceeding *in rem*, a valid seizure and actual control of the *res* by the marshal gives jurisdiction; and an improper removal of it from his custody, as by an order of court improvidently made, does not destroy the jurisdiction.²

There is nothing in the nature of the admiralty jurisdiction, or of an appeal in admiralty, which prevents parties in the court of admiralty, whether sitting in prize or as an instance court, from submitting their case by rule of the court to arbitration.³

Courts of admiralty have jurisdiction over torts of passengers upon the high seas.⁴

Courts of admiralty have jurisdiction over contracts for the carriage of passengers by sea,⁵ and upon other navigable waters.⁶

Admiralty jurisdiction has no regard to registry or enrolment and license.⁷

Federal courts have jurisdiction to try for murder committed "upon the high seas, or in any river, haven, basin, or bay, out of the jurisdiction of any particular State."

But they have no jurisdiction to try for murder committed on board a vessel of the United States in Boston harbor.⁸

¹ The Bark Onore, 6 Benedict, 564. sengers, 467; The Moses Taylor, 4 Wall. 411.

² The Rio Grande, 23 Wall. 458. ⁶ Thompson's Carriers of Passengers, 543, 544.

³ United States v. Farragut, 22 Wall. 406. ⁷ The General Cass, Dist. Ct. U. S. Eastern District of Michigan, The American Law Times Reports,

⁴ Thompson's Carriers of Passengers, 459; Chamberlain v. Chandler, 3 Mason, 242. vol. v. p. 12, January, 1872.

⁵ Thompson's Carriers of Passengers, 467; The Moses Taylor, 4 Wall. 411. ⁸ United States v. Bevans, 3 Wh. 336; United States v. Pirates, 5 Wh.

The common-law liability of a carrier for loss or delay of goods intrusted to him for transportation by sea may, under the Constitution of the United States, be enforced by appropriate proceedings in admiralty.¹

For a "History of Admiralty Jurisdiction in the Supreme Court of the United States," see the *American Law Review*, vol. v. No. 4, pp. 581-621, Boston, July, 1871.

The above-named article is said to be by R. H. Dana, Jr., author of "Two Years before the Mast" and of "The Seaman's Friend," of which last work the thirteenth edition is now before me.

Further as to admiralty maritime jurisdiction, see *Desty's Federal Constitution*, 1879, pp. 221-223; and *Ettinge on Admiralty Jurisdiction*, Philadelphia, 1879; also see *American Inter-State Law*, pp. 301, 302, 305, 306, by David Rorer, of the Iowa Bar, edited by Levy Mayer, of the Chicago Bar. Chicago: Callaghan & Co., 1879.

Finally, as to jurisdiction in admiralty, we may remark that it has been progressive, and kept pace with the march of science, art, commerce, and civilization.

Azuni, a celebrated writer on the maritime law of Europe, a century ago, says it would be reasonable "to determine definitively that the jurisdiction of the territorial sea shall extend no farther than *three* miles from the land, which is, without dispute, the greatest distance to which the force of gunpowder can carry a ball or bomb." See 1 Azuni, pt. 1, ch. 11, No. 15, p. 205.

184; *United States v. Wiltberger*, 5 Wh. 76. And see *Federal Practice*, by Field & Miller, 239; and, for jurisdiction of District Courts in admiralty generally, see the same work, p. 50 *et seq.* And see also Rorer on *Inter-State Law*, 301.

¹ *Wait's Actions and Defences*, 97; *New Jersey Steam Navigation Co. v. Merchants' Bank*, 6 How. 378; *Rich v. Lambert*, 12 How. 347; *King v. Shepherd*, 3 Story, 349.

Now we know that at the present day the "distance" largely exceeds "*three* miles."

See also, as to "malleability to suit the necessities and usages of the mercantile and commercial world," *Mercer County v. Hacket*, 1 Wall. 95.

CHAPTER II.

SALVAGE.

SECTION I.—INGREDIENTS OF SALVAGE.

NATURE of the service, and in what cases salvage remuneration is payable, form the subjects of this section.

Justice Bradley (of the Supreme Court of the United States), acting as Circuit Justice, defined salvage as follows: "Salvage is a reward for meritorious services in saving property in peril on navigable waters, which might otherwise be destroyed, and is allowed as an encouragement to persons engaged in business on such waters, and others, to bestow their utmost endeavors to save vessels and cargoes in peril."¹

In Arnould on the Law of Marine Insurance it is said: "In cases of abandonment the assured is entitled to the whole amount of the insurance, and the underwriter, on payment of such amount, is entitled to the net proceeds of whatever may be saved; in other words, to the salvage, after deducting the expenses of saving and receiving it."²

It is not in this last sense, but in the former, as defined by Justice Bradley, that the word "salvage" is employed by me in this book. See also a definition in *Hennessy v. The Versailles*, 1 Curtis C. C. 355.

¹ *Sonderberg v. The Tow Boat Co.*, 8 Woods, 143.

² Arnould, 1002 (3d ed., by David MacLachlan, London, 1866).

Salvage is a service rendered in the rescue or relief of property at sea, in imminent peril of loss or deterioration;¹ of property on the sea, or wrecked on the coast of the sea;² or on a public navigable river or lake, where inter-state or foreign commerce is carried on.³

The service must be voluntary, and not a service owed to the property or to its owner.⁴

The term "salvage" is used to denote the nature of the service, even when an absolute compensation is agreed on.⁵

Whenever service has been rendered in saving property on the sea, the service is, in the sense of the maritime law, a salvage service.⁶

It may be laid down as a general rule, subject to certain exceptions which will be presently noticed, that the plaintiffs in a salvage suit will be required to establish:—

1st, The fact that the vessel proceeded against was in danger or distress;

2d, That the salvors rendered her assistance; and,

3d, That their efforts were successful.

The ingredients of a salvage service are:—

First, Enterprise in going out in tempestuous weather to assist a vessel in distress, risking their own lives to save their fellow-creatures and to rescue their property; *second*, The degree of danger and distress from which

¹ The *H. B. Foster*, Abb. Adm. The *Centurion*, 1 Ware, 477; *Bearse v. Pigs of Copper*, 1 Story, 314; 222.

² The *Emulous*, 1 Sumn. 210.

³ The *Circassian v. Two Ferry Boats*, 2 Bond, 375; *Talbot v. Jenny*, 1 Sprague, 315; Abb. Adm. 298.

⁴ The *Clarita and Clara*, 23 Wall. 1.

⁵ The *Williams*, 1 Brown Adm. 217; The *Emulous*, 1 Sumn. 207;

The *M. B. Stetson*, 1 Low. 119; *Fritz v. Bull*, 12 How. 466; The *A. D. Patchin*, 1 Blatchf. 420.

⁶ The *Narragansett*, Olcott, 390; The *Emulous*, 1 Sumn. 207.

the property is released, as when in imminent peril; *third*, The degree of labor and skill of salvors; and, *fourth*, The value of the property saved.¹

The preservation of life, if it can be connected with the preservation of property, whether by accident or not, must be considered.²

Distress of Vessel. — Distress or peril of some kind to the vessel receiving assistance is obviously a necessary ingredient in a salvage service.³

But once a distress or peril, which elevates the service performed to the dignity of salvage services, is shown to have existed, its extent is a matter which, however important its bearing may be upon the amount of remuneration, does not affect the nature of the service.⁴

Even though a vessel has sustained no real damage, yet if she is in a position of reasonable apprehension of actual danger, assistance rendered to her under such circumstances will be of the nature of a salvage service.⁵

Risk to the salvors may be said to be mainly of importance as affecting their remuneration. It necessarily enhances the merit of the services they render, and

¹ *The Delphos*, Newb. 419; *The Clifton*, 3 Hagg. Adm. 117; *The Narragansett*, Olcott, 390.

² *The Emblem*, 2 Ware (Dav.), 64; *The Aid*, 1 Hagg. Adm. 83; *The Two Catherine's*, 2 Mason, 319; *The Mulhouse*, 12 Law Rep. n. s. 276; *Spencer v. The Charles Avery*, 1 Bond, 119; *The George Nicholas*, Newb. 452; *The Boston*, 1 Sumn. 328.

³ *The Mary*, 1 W. Rob. 448; *The Upnor*, 2 Hagg. 3; *The Persia*, 1 Spinks, 166; *The Traveller*, 3 Hagg. 371; *The Giacomo*, 3 Hagg. 344; *The Anastasia*, 1 Ben. Adm. 166.

⁴ *The Charlotte*, 3 W. Rob. 71; *The Reward*, 1 W. Rob. 174; *The Westminster*, 1 W. Rob. 229; *The Wilhelmine*, 1 Notes of Cases, 376; *The Eugenie*, 3 Notes of Cases, 430; *The Harbinger*, 16 Jur. 729; *Talbot v. Seeman*, 1 Cranch, 1; *The Versailles*, 1 Curt. 353; *The Brig Alphonso*, 1 Curt. 878; *The Independence*, 2 Curt. 350.

⁵ *The Aztecs*, 21 L. T. n. s. 797. See also *The Raikes*, 1 Hagg. 246; *The Phantom*, L. R. 1 Adm. 58; *The Joseph C. Griggs*, 1 Ben. Adm. 80.

entitles them to a higher reward than they would otherwise receive; but it is not a necessary element in salvage.¹

To be in a condition authorizing a salvage service, a vessel must be subject to something more than the ordinary peril of the sea.²

To entitle to salvage, it is not necessary that the loss should be inevitably certain, nor that the danger should be real and imminent.³

The fact that the peril was slight, and the duration of the service brief, does not prevent the case from being one of salvage.⁴

The Assistance rendered.—The English authorities lay it down broadly, that it is absolutely essential that the salvors should have rendered actual assistance to the vessel in distress; and that, however great may have been the peril to which the property was exposed; if it was not in fact saved by their instrumentality, no salvage can be allowed, however benevolent may have been their intentions, or heroic their conduct.⁵

Some of the decisions in United States courts have been governed by the same principle. Thus, in the case of *The Chateau*, in the United States Circuit

¹ *The Pericles*, B. & L. 80, 81. See also *The Bomarsund*, Lush. 77; *The Joseph C. Griggs*, 1 Ben. 81. *The Norden*, 1 Spinks, 185; *The Burns (Irish)*, 24 L. T. n. s. 232. And see *Spencer v. The Charles Avery*, 1 Bond, 121.

² *The Cheeseman v. Two Ferry Boats*, 2 Bond, 377; *The Independence*, 2 Curt. 352; *The Charlotte*, 3 W. Rob. 68; *The Princess Alice*, 3 W. Rob. 138; *The Versailles*, 1 Curt. 353; *The Reward*, 1 W. Rob. 174.

³ *Talbot v. Seeman*, 1 Cranch, 1; *Murray v. The Charming Betsy*, 2 Cranch, 64; *The Cornelius Grinnell*, 16 Law Rep. n. s. 677; *The*

⁴ *Coffin v. The John Shaw*, 1 Cliff. 230.

⁵ *The Zephyrus*, 1 W. Rob. 329, 330. See also *The Atlas*, 1 Lush. 518-521; *The Ranger*, 9 Jur. 119; *The Edward Hawkins*, 1 Lush. 515, 516; *The Undaunted*, 1 Lush. 90-92; *The Chetah*, 39 L. J. Adm. 4; *The Ranger*, 3 Notes of Cases, 589, 590.

Court for the Fifth Circuit and District of Louisiana, April term, 1881 (not reported), Pardee, Circuit Judge, said: "When services are rendered without beneficial results, no salvage can be allowed. Marvin on Wreck and Salvage, § 103; Schooner Elvira, Gilp. 67; Conkling's Adm. 280; The Whitaker, 1 Sprague, 282; The Dodge Healy, 4 Wash. C. C. 651."

Success.—It may, as a general rule, be stated, that success is the main ground upon which a claim for salvage must rest.¹

The reward is for benefit actually conferred in the preservation of property, and not for meritorious services alone.²

An indispensable ingredient of a salvage claim is, that the service has contributed immediately to the rescue or preservation of the property in peril.³

Unless the property is saved in fact by the salvors, compensation will not be allowed.⁴

If the property is not benefited by the exertions of the salvors, they can claim no compensation as salvors;⁵ they have no remedy *in rem*.⁶

Intentions and exertions are not alone sufficient.⁷

¹ The Lockwoods, 9 Jur. 1017.

² The India, 1 W. Rob. 406.

³ The John Wurts, Olcott, 462; The Whitaker, 1 Sprague, 282; s. c. 8 Law Rep. n. s. 497; Montgomery v. The T. P. Leathers, Newb. 421; Emerson v. The Pandora, Newb. 438; The Blackwall, 10 Wall. 1; The Albion Lincoln, 1 Low. 76; The Santipore, 1 Spinks, Ad. & E. 231; The Genessee, 12 Jur. 401; The Atlas, 1 Lush. 518; The E. U., 1 Spinks, Ad. & E. 63; Spencer v. The Charles Avery, 1 Bond, 119.

⁴ Clarke v. The Dodge Healy, 4 Wash. C. C. 651; Montgomery v. The T. P. Leathers, Newb. 428.

⁵ The Sailor's Bride, 1 Brown Adm. 69; Jackson v. The Magnolia, 20 How. 296; Allen v. Newberry, 21 How. 244; McGuire v. Card, 21 How. 248.

⁶ The Camanche, 8 Wall. 488; The Henry Ewbank, 1 Sumn. 400; Montgomery v. The T. P. Leathers, Newb. 421; Clarke v. The Dodge Healy, 4 Wash. C. C. 651. But see The Williams, 1 Brown Adm. R. 208, *per tot.*

⁷ Clarke v. The Dodge Healy, 4 Wash. C. C. 651; The India, 1 W. Rob. 406 (but see The Pontiac, Newb. 130; s. c. 5 McLean, 359; The Undaunted, Lush. 90; The

Salvage cannot be allowed upon attempts at rescue which have been unsuccessful, though highly meritorious.¹

But if an effort be made in good faith, with means believed to be adequate, the salvor may recover something in the nature of a *quantum meruit*, although his efforts are unsuccessful.²

If, however, a vessel in distress accepts the services of strange hands, such services are in the nature of salvage, even although the work done may be of no great difficulty or importance.³

If the salvors, instead of being mere volunteers, are actually engaged by the ship in distress they are entitled to be paid for the efforts they make, notwithstanding their labors may prove of no benefit.⁴

Persons who assist a vessel in distress, at the request of her master or owner, with no definite arrangement for compensation, must ordinarily be paid as salvors.⁵

If a vessel in a gale of wind hail a steamer to lie by her to take her in tow if required, and the steamer do so, even should the ship ride out the gale safely without the assistance of the steamer, the latter would nevertheless be entitled to salvage.⁶

Upon the same principle, salvage was decreed to

Ranger, 9 Jur. 119; The Albion, 8 Hagg. 254; The Mary, 1 W. Rob. 457; The Ranger, 9 Jur. 119; The Lockwoods, 9 Jur. 1017; The Narragansett, Olcott, 392; Talbot v. Seeman, 1 Cranch, 1.

¹ Brooks v. The Wm. Penn, 1 Am. Law Reg. 584.

² The Sailor's Bride, 1 Brown Adm. 69; Allen v. Newberry, 21 How. 244; McGuire v. Card, 21 How. 248; Jackson v. The Magnolia, 20 How. 296.

³ The Bomarsund, Lush. 77.

⁴ The Undaunted, Lush. 77. See also The Prince of Wales, 6 Notes of Cases, 39; The E. U., 1 Spinks, 63; The Aztecs, 21 L. T. N. S. 797.

⁵ The Louisa Jane, 2 Low. 295.

⁶ The Undaunted, Lush. 90; The Ship Canada, Bee, 90; The Underwriter, 4 Blatchf. 94; The J. G. Paint, 2 Ben. 174.

persons who had been actually engaged to render services which did not in the result contribute to the safety of the vessel.¹

If part of a salvage service is performed by one set of salvors, and the salvage is afterwards completed by others, the first set are entitled to reward *pro tanto* for the services which they actually render.²

And this even although the part they took, standing by itself, would not in fact have effected the salvage.³

If, however, the first set of salvors abandon the enterprise, *cum animo revertendi*, before its successful completion, they will have no legal claim to salvage; and if the abandonment is voluntarily made, without any advantage being taken of their necessities by a second set, such second set may intervene and save the property and entitle themselves to the reward to the exclusion of the first, although they afterwards return and claim to re-engage in the service.⁴

Instances of Salvage Services. — The court of admiralty looks with jealousy on salvage by transshipment, as leading to deception on owners and underwriters,⁵ and will refuse to regard transshipment of cargo by itself as a salvage service; but if the cargo be in any danger at the time, then the service assumes a salvage character, and those rendering it are entitled to be rewarded as salvors.⁶

¹ The Pontiac, Newb. 180; see also The S. W. Downs, Newb. 458.

² The Samuel, 15 Jur. 407; The Undaunted, 1 Lush. 90.

³ The Atlas, Lush. 518-527. See also The Jonge Bastiaan, 5 C. Rob. 323; The E. U., 1 Spinks, 63; The Genessee, 12 Jur. 401; The Rosalind (Irish case), 12 L. T. N. S. 553; same case reported in 2 Maritime Law Cases, 220, upon the principle

laid down by the Privy Council in the case of The Atlas, *ubi supra*; The Santipore, 1 Spinks, 231. See also The Magdalen, 31 L. J. Adm. 22; The Coromandel, Swa. 205.

⁴ The India, 1 W. Rob. 406; The Schooner John Wurts, Olcott, R. 462; The Henry Ewbank, 1 Sumn. 400.

⁵ The Hope, 3 Hagg. 423, 424.

⁶ The Westminster, 1 W. Rob.

It is doubtful whether the mere giving of advice or information as to locality, even to a foreign vessel (especially if the vessel proceeded against was in no actual distress at the time, or required only pilotage assistance), will entitle the person giving it to salvage reward.¹

If, however, the advice is accompanied by enterprise or risk on the part of those giving it, the service will be held to be one of salvage.²

The ignorance of the master in such a case will not, under ordinary circumstances, tend to augment a service where simple pilotage only was required, into one of salvage; but, under other circumstances, ignorance of locality may be an important matter.³

Persons who communicate to a vessel which subsequently renders salvage services the condition of the vessel in distress, and thus lead to her being saved, are to be regarded as salvors.⁴

And where a messenger travelled a distance of twelve miles for the purpose of procuring assistance for a vessel in distress, he was decreed salvage remuneration.⁵

If one vessel save another from an impending collision, she will be entitled to salvage.⁶

But where a collision happens between two vessels, and both are to blame, the crew of one vessel cannot

229; *The Columbia*, 3 Hagg. 428. See also *The Purissima Concepcion*, 3 W. Rob. 181, and *The Cargo ex Honor*, L. R. 1 Adm. 87.

¹ *The Little Joe*, Lush. 68; *The Vrow Margaretha*, 4 C. Rob. 103. But see *The American Insurance Co. v. Charles Johnson*, 1 Blatchf. & Howl. 80 (the case begins at p. 1).

² *The Eliza*, Lush. 536.

³ *The Cumberland*, 9 Jur. 191, 192, n.

⁴ *The Ocean*, 2 W. Rob. 91. See also *The Carrier Pigeon*, 4 Irish Jur. n. s. 99. And see *Ship Arctic*, Bee, 232.

⁵ *The Elizabeth Bibby*, 3 Irish Jur. 257.

⁶ *The Saratoga*, Lush. 318. See also *The Annapolis*, Lush. 355.

claim salvage for rescuing part of the cargo on board the other.¹

If, however, those rendering salvage services after a collision are proved to have been the innocent parties, they are entitled to claim as salvors.²

The court, however, is indisposed to encourage salvage suits which are engrafted upon collision, especially where the services rendered are small.³

Successful exertions by the crew of one vessel to avoid an impending collision with another are not salvage services.⁴

Upon a collision, each vessel is bound to render to the other any aid necessary.⁵

Where two vessels at anchor came into collision without fault, and to prevent destruction one of them slipped her cable and went ashore, no claim for a salvage service arose as against the other vessel.⁶

A vessel condemned in damages for a collision will not be allowed salvage for rescuing and towing the injured vessel to a place of safety.⁷

The supplying of men to a ship that is short-handed, or a master to a vessel whose master has died or is sick, is a service in the nature of salvage.⁸

Thus, where the crew of the "Roe," whilst on the high seas, having been much reduced by death and sickness, another vessel, the "Abdalla," supplied the deficiency

¹ The Cargo *ex Capella*, L. R. 1 Adm. 358. rines, 2 Mason, 337; The Dawn, 2 Ware (Dav.), 137; The Calypso,

² The Hannibal and The Queen, L. R. 2 Adm. 53. See The Sappho, Swa. 242. 2 Hagg. Adm. 217. ³ The Clarita and Clara, 23 Wall. 1.

⁴ The Sappho, *ubi supra*. See also The H. M. Hayes, Lush. 355. ⁵ Beane v. The Mayurka, 2 Curt. 72.

⁶ The John Perkins, 11 Law Rep. N. s. 87; The Acorn, 11 Law Rep. N. s. 99; Beane v. The Mayurka, 2 Curt. 78; The Two Cathedrines, 2 Mason, 337; The Dawn, 2 Ware (Dav.), 137; The Calypso, 2 Hagg. Adm. 217. ⁷ The Sampson, 4 Blatchf. 28. ⁸ The Janet Mitchell, Swa. 111; The Golondrina, L. R. 1 Adm. 334.

by two from among her own crew, it was held that not only these men, but the rest of the crew of the "Abdalla" were entitled to salvage.¹

Instances of other Salvage Services. — Saving lives and property on board a burning ship is a salvage service.²

Assisting to extinguish the flames in a vessel, which has taken fire by spontaneous combustion, and towing her into port, is a service in the nature of salvage.³

The towing into a place of safety of a vessel lying in dock, and in danger of catching fire from the surrounding warehouses, which were in flames;⁴ and the saving of the cargo from a vessel on shore and wrecked;⁵ the rescuing of a raft of timber floating out to sea,⁶ — are salvage services.

Salvage services may be rendered to a raft of timber found derelict, and a lien therefor enforced in admiralty.⁷

The bringing into port of a derelict vessel,⁸ or part of her cargo;⁹ the furnishing of an anchor and chain in boisterous weather to a vessel at sea which had slipped her cable;¹⁰ the getting of a vessel afloat which had driven ashore;¹¹ the raising of a sunken vessel by means of apparatus,¹² — are salvage services.

¹ The *Roe*, Swa. 84. And the same doctrine was held in *The Charlotte Wylie*, 5 Notes of Cases, 4. See also *The Brig Alphonso*, 1 Curt. C. C. 376; *The Bark George Nicholas*, Newb. 499.

² *The Eastern Monarch*, 1 Lush. 81.

³ *The Rosalie*. 1 Spinks, 188.

⁴ *The Tees and The Pentucket*, 1 Lush. 505.

⁵ *A Raft of Spars*, 1 Abb. 485.

⁶ *The Atlas*, Lush. 518; *The Coromandel*, Swa. 205; *The Magdalen*, 31 L. J. Adm. 22 (but see *post*, from Taney, 533). See also *The Eleanore*, 33 L. T. Adm. 19; See-

man v. *The Erie R. R. Co.*, 2 Ben. 128; *The Circassian*, 2 Ben. 171; *The Jack Jewett*, 2 Ben. 463.

⁷ *Fifty Thousand Feet of Timber*, 2 Low. 64.

⁸ *The Atlas*, *ubi supra*; *The Coromandel*, *ubi supra*; *The Magdalen*, *ubi supra*.

⁹ *The King v. Property Derelict*, 1 Hagg. 388.

¹⁰ *The Undaunted*, Lush. 90; *The Prince of Wales*, 6 Notes of Cas. 39.

¹¹ *The Rajasthan*, Swa. 171; *The Alfen*, Swa. 189; *The Himalaya*, Swa. 515. And see *The J. T. Abbot*, 2 Sprague, 101.

¹² *The Catherine*, 12 Jur. 682.

The recapture of a vessel from pirates,¹ or from insurgent slaves,² or out of the hands of an enemy;³ and the rescue and removal into deep water of a vessel which was ashore and in danger of being plundered by ravagers,⁴ — have all been held to be salvage services.

A tug that had brought up to a pier, and within reach of the fire department, a barge loaded with alcohol, upon which fire had broken out, has been held entitled to salvage.⁵

With reference to the case just above cited, as to the rescuer of a raft of lumber, I would observe, that, in a case decided by Taney (Chief Justice), acting as Circuit Justice, it is said that "where rafts of lumber anchored in the Susquehanna River at Port Deposit, within the flux and reflux of the tide, are driven from their anchorage by a high wind and tide, but are not broken up, and whilst floating down the stream are rescued and brought to the shore, this is not a salvage service."⁶

Where the master of a vessel was killed in an affray, and the second mate was so badly hurt as to be incapable of doing duty, and the first mate hurt, but he took command and headed the vessel to port, signalling a passing vessel for relief, which afforded the relief, — the mate and the salving vessel had performed salvage services.⁷

¹ *The Marianna*, 3 Hagg. 206. See *The Mary*, 1 W. Rob. 448; *The Calypso*, 2 Hagg. 209.

² *The Trelawney*, 4 C. Rob. 283. See *The Anne*, 5 C. Rob. 100.

³ *The Beaver*, 3 C. Rob. 290. See also *The Louisa*, 1 Dods. 317; *The Frances and Eliza*, 2 Dods. 115; *The Franklin*, 4 C. Rob. 147; *The Urania*, 5 C. Rob. 147.

⁴ *The Lady Worsley*, 2 Spinks, 253 (but see *The Governor Raffles*, 2 Dods. 14, where it was held that

the crew of a ship could not claim salvage for rescuing it from mutineers).

⁵ *Corwin and Others v. Barge Jonathan Chase* (1880), 2 Fed. Rep. 268; *The Branston*, 2 Hagg. Adm. 8; *Beane v. The Mayurka*, 2 Curt. 78.

⁶ *Tome v. Four Cribs of Lumber*, Taney, 547, cited in 5 Biss. 308.

⁷ *The J. L. Bowen*, 5 Ben. 298; *The Janet Mitchell*, Swa. 111; *The*

In all cases where services are rendered in saving property in danger of being lost on the high seas, or when wrecked or stranded on the shore, it is, in the sense of the maritime law, a salvage service.¹

To constitute a salvage service, it is not necessary that a vessel, whether sailing or steam, should be un-navigable, or that a steam-vessel should be injured, not merely in her machinery, but in her hull, or her sails.²

A steamboat, having been dismantled and stripped of her boiler, engine, and paddle-wheels, was fitted up as a saloon and hotel, and while being towed to another locality, there to be used for a similar purpose, is not a subject for salvage service, as not being engaged in commerce and navigation.³

Where the owner abandons all effort to save her, and a third party, at his own risk and expense, gets her off and repairs her, it is in the nature of salvage services.⁴

Where a stranded steamer employs another to get her off, herself furnishing some of the necessary motor power and directs the movements, the hired vessel does not run the risks of salvage service.⁵

A vessel, in point of fact, for twelve or fourteen hours in a condition where her instant destruction was menaced, and the lives of those who might remain on board of her greatly jeopardized, may be rightly taken possession of by salvors.⁶

Czarina, 2 Sprague, 48; Williamson v. The Alphonso, 1 Curt. 376; The Roe, Swa. 84; The Golondrina, Law Rep. 1 Adm. & E. 334.

¹ The Independence, 2 Curt. 355; The Centurion, 1 Ware, 477; The Emulous, 1 Sumn. 207; Bearse v. Pigs of Copper, 1 Story, 314; The Pontiac, Newb. 137; s. c. 5 McLean, 367.

² The Saragossa, 1 Ben. 551; The Emily B. Souder, 7 Ben. 555.

³ The Hendrik Hudson, 3 Ben. 419.

⁴ Barney v. Eaton, 1 Biss. 242.

⁵ The Virginia, 3 Biss. 49.

⁶ The John Gilpin, Olcott, 80; Clarke v. The Dodge Healy, 4 Wash. C. C. 651.

A barge, without a small boat or any means of propulsion, adrift, although she came to anchor and the weather was good, was in a situation to have salvage service performed; but an adjustment of the same by the owner of the cargo was not binding on the vessel.¹

Salvage was allowed in a case where a vessel and cargo were found waterlogged, abandoned, and apparently, though in fact not, derelict.²

A wrecking steamer, wrecked on a salving enterprise, may be the subject of salvage by the company which chartered it.³

A derrick boat raised from the bottom of the channel of a public navigable river may be the subject of a libel for salvage in admiralty.⁴

Life Salvage. — Formerly the English court of admiralty had no authority to give salvors any reward for the saving of human life in cases where it was not connected with the preservation of property.⁵

To remedy this defect in the law, it was provided by the Merchant Shipping Act, 1854, that reasonable salvage should be payable to those who rendered assistance in saving the *lives* of the persons belonging to any ship or boat stranded, or otherwise in distress, on the shore of any sea or tidal water within the limits of the United Kingdom. The provisions were subsequently extended by 24 Vict. ch. 10, § 9. By section 459 of 17 & 18 Vict. ch. 104, life salvage takes priority over all other claims for salvage. See Jones's *Law of Salvage*, 17 (London, 1870), and Coote's *Practice*, p. 4 (London, 1869), 2d ed.

¹ *The Union Express*, 1 Brown Adm. 516.

² *The Senator*, 1 Brown Adm. 372.

³ *The Aroma Mills*, 2 Hughes, 80.

⁴ *E. O. Maltby v. Steam Derrick Boat*, 3 Hughes, 477.

⁵ *The Silver Bullion*, 2 Spinks, 70, 74.

In the American admiralty it has been held that there is no salvage for saving life alone; but saving life enhances the amount of salvage for saving property.¹

Gallantry and exposure in the rescue of life and property are entitled to the highest reward.²

A stoppage to save the crew of a wrecked vessel and sinking ship, whose lives are in jeopardy, is justifiable, and is not a deviation that discharges underwriters; but a delay to save property is such a deviation.³

Military Salvage.—The compensation given, on the principles of salvage, where a vessel or cargo is recaptured from pirates or enemies, before condemnation as prize, is termed military salvage.

By section 4652 of the United States Revised Statutes it is provided that, when any vessel or other property shall have been captured by any force hostile to the United States, and shall be recaptured, and it shall appear to the court that the same had not been condemned as prize before its recapture, by any competent authority, the court shall award a meet and competent sum as salvage, according to the circumstances of each case. If the captured property belonged to the United States, it shall be restored to the United States, and there shall be paid from the treasury of the United States, the salvage, costs and expenses ordered by the court.

¹ 12 Law Rep. n. s. 276; *The Emblem*, 2 Ware, 61; *Bark George Nicholaus*, Newb. 449; *The Sarpedon*, 18 Alb. L. J. 37.

² *The H. B. Foster*, Abb. Adm. 232; *The Anna*, 6 Ben. 169.

³ *The Schooner Boston and Cargo*,

1 Sumn. 328; *The Henry Ewbank*, 1 Sumn. 400; *Bond v. Brig Cora*, 2 Wash. C. C. 80; *Perkins v. Augusta Insurance Co.*, 10 Gray, 312; *A Box of Bullion*, 1 Sprague, 57; *Bark George Nicholaus*, Newb. 449.

If the recaptured property belonged to persons residing within, or under the protection of, the United States, the court shall adjudge the property to be restored to its owners, upon their claim, on the payment of such sum as the court may award as salvage, costs, and expenses.

If the recaptured property belonged to any person permanently resident within the territory and under the protection of any foreign prince, government, or state, in amity with the United States, and by the law or usage of such prince, government, or state the property of a citizen of the United States would be restored under like circumstances of recapture, it shall be adjudged to be restored to such owner, upon his claim, upon such terms as by the law or usage of such prince, government, or state would be required of a citizen of the United States under like circumstances of recapture; or, when no such law or usage shall be known, it shall be adjudged to be restored upon the payment of such salvage, costs, and expenses as the court shall order. The whole amount awarded as salvage shall be decreed to the captors, and no part to the United States, and shall be distributed as in the case of proceeds of property condemned as prize. Nothing in this title shall be construed to contravene any treaty of the United States.¹

By section 4642 of the United States Revised Statutes it is enacted that all ransom-money, salvage, bounty, or proceeds of condemned property, accruing

¹ The Schooner *Adeline*, 9 Cranch, 244; The *Star*, 3 Wh. 78; *Att.-Gen.* 289; Captain Carpenter, *Moodie v. Brig Harriet*, Bee, 128; for himself and Officers and Crew of The *Iris*, *v. French Ship Eugenie*, 7 West. L. J. 326. Talbot *v. Seeman*, 1 Cranch, 1; Clayton *et al. v. Ship Harmony*, 1 Pet. Adm. 70; Williams *v. Suffolk In-*

or awarded to any vessel of the navy, shall be distributed and paid to the officers and men entitled thereto in the same manner as prize-money, under the direction of the Secretary of the Navy.

Section 3689 of the United States Revised Statutes, 2d edition, at page 728, provides that one moiety of the proceeds of prizes captured by vessels of the United States be distributed to the officers and crews thereof, in conformity to the provisions of title "Prize;" also the proceeds of derelict and salvage cases adjudged by the courts of the United States to salvors.

By section 4759 of the United States Revised Statutes it is provided that two per centum on the net amount, after deducting all charges and expenditures, of the prize-money arising from captured vessels and cargoes, and on the net amount of the salvage of vessels and cargoes recaptured by the private armed vessels of the United States, shall be secured and paid over to the collector or other chief officer of the customs at the port or place in the United States at which such captured or recaptured vessels may arrive; or to the consul or other public agent of the United States residing at the port or place, not within the United States, at which such captured or recaptured vessels may arrive. And the moneys arising therefrom are pledged by the government of the United States as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled, on board of the private armed vessels of the United States, in any engagement with the enemy, to be assigned and distributed in such manner as is or may be provided by law.

To constitute a case for military salvage for the

recapture of a vessel taken as prize, it must appear that the property was in the possession, either actual or constructive, of the enemy; and that it was in actual hazard of being condemned as prize. The recapture must be lawful, and there must have been a meritorious service rendered to the recaptured.¹

Military salvage will not be allowed merely on account of stopping a ship from going into an enemy's port.²

In the case of *The Star*, Dickinson *et al.*, Claimants, 3 Wheat. 78, Story, J., delivering the opinion of the court, said: "This is the case of an American ship captured by the enemy during the late war, and, after condemnation and sale to an enemy merchant, recaptured by the American private armed ship "Surprise." And the question is, whether, under these circumstances, the ship is to be restored on salvage to the former American owner, or condemned as good prize of war." And the opinion concludes with these words: "The court are of opinion that the property having been previously condemned, and title passed to the enemy, and, consistently with the salvage and prize acts, must be decreed to be good prize of war." Therefore salvage was not allowed.

For other cases where salvage was not allowed, see *Waitestal v. Brig Antelope and Cargo*, Bee, 233; *The Robert Hall*, Edwards Adm. Rep. 265, judgment of Sir William Scott; *The Dorothy Foster*, 6 Rob. Adm. 58; *Talbot v. Seeman*, 1 Cranch 1; *The Wan Onskan*, 2 Rob. Adm. 299.

Military Salvage. — The right to salvage on recapture

¹ *Talbot v. Seeman*, 1 Cranch, skins, 2 Paine, 324; *The Anne* 28; *Murray v. The Charming Betsy*, Green, 1 Gall. 274, 289.

² Cranch, 121; *Davison v. Seal-* ² *The Anne Green*, *ubi supra*.

is recognized and regulated, not created, by act of Congress.¹

Recapture from pirates gives a fair claim for salvage.²

When the act of Congress does not comprehend the case, then the court is to decide, on a just estimate of the danger from which the recaptured was saved, and the risk attending the retaking of the vessel, what is a reasonable salvage.³

The valuation is to be taken at the place of restitution.

The value is to be considered with reference to the moment of arrival in port, for the captors have no right to a salvage or any additional value which the cargo may acquire by the payment of duties, and other incidental expenses incurred afterwards. The valuation is to be taken at the port of restitution *deductis deducendis*.⁴

From the Federal Reporter of February 15, 1881, I extract the following, in the case of *Coffin v. The Brig Akbar* (District Court, E. D. New York, December 29, 1880): —

The crew of the brig "Akbar," bound from Havana for New York with a cargo of sugar, when five days out, were, with the exception of the mate, who was ailing, and one seaman, taken down with yellow fever. *Held*, where the brig was boarded by the master and mate of the schooner "Munson," then short the chief mate and one seaman, in answer to a signal of distress, and command was assumed by the mate, who brought her safe to New York, and where neither the master nor the mate nor the "Munson" sustained any injury

¹ *Talbot v. Seeman*, 1 Cranch, 1.

⁴ *The Progress*, Edwards Adm.

² *The Theodore*, 1 Op. Att.-Gen. 597 (Wirt).

³ *Rep.* at pp. 223-224, judgment of Sir William Scott.

⁵ *Ibid.* at p. 44.

therefrom, that the "Akbar" and cargo should pay the sum of \$3,600 for the services rendered.

Held, further, that of this sum \$2,500 should be awarded to the mate; \$500 to the owners of the "Munson;" \$350 to the master; and the remaining \$250 should be divided among the crew, — certain seamen who went in the boat to the "Akbar" with the master and mate receiving a double share.

Held, further, that the extra labor cast upon one of the crew of the "Akbar" by the sickness of the rest did not give him a right to claim salvage.

Services rendered in pulling boilers out of a navigable river, into which they had fallen from a steamboat, are salvage services.¹

In the case of *Lamar et al. v. The Barque Penelope*, United States District Court, District of South Carolina, Magrath, J. (manuscript, not reported), it was held that a salvage service is not disregarded because without it the vessel might have escaped, but it is rewarded because by it a vessel exposed to danger was brought safely into port.

SECTION II. — WHO MAY CLAIM AS SALVORS.

A salvor is one who, without any particular relation to a vessel in distress, proffers useful service, and gives it as a voluntary adventurer, without any pre-existing covenant connecting him with the duty of preserving the vessel.²

A person whose oxen are used in a salvage service does not thereby become a salvor.³

¹ *The Silver Spray's Boilers*, 1 Drogan, 10 Pet. 108; *The Clarita* Brown Adm. & R. Cases, 349. and *Clara*, 23 Wall. 1; *The Acorn*,

² *The Charles*, Newb. 333; *The* 3 Ware, 99.
³ *The Ottawa*, 1 Low. 274.
Neptune, 1 Hagg. Adm. 227; *Lea v. Alexander*, 2 Paine, 472; *Hobart v.*

Nor does one who supplies tools, &c., to assist in the service,¹ or who supplies blocks;² nor one who purchases a wreck.³

Firemen belonging to the fire department of a city, extinguishing a fire in a ship at the wharf, do not become salvors.⁴

The Crew.—The crew of a vessel being bound by their contract to save the ship and cargo in case of danger or shipwreck, it is a general and almost inflexible rule that they are not permitted to assume the character of salvors.⁵

If, however, the contract between the owners and the crew be terminated by the abandonment of the vessel, the crew may become entitled to salvage reward for the services they subsequently render towards the preservation of the ship or cargo.⁶

An abandonment, to operate as a dissolution of the contract, must, however, be *bona fide* and final.⁷

Capture by a belligerent dissolves or suspends the connection between the seamen and other vessels.⁸

Even if there be no abandonment of the vessel, the seamen's contract may be dissolved by the act of the master in discharging them.⁹

Seamen generally cannot be salvors of their own vessel.¹⁰

¹ *The Ottawa*, 1 Low. 277; *The Charlotte*, 3 W. Rob. 68; *The Vine*, 2 Hagg. Adm. 1.

² *Squire v. Tons of Iron*, 2 Ben. 24; *The Independence*, 2 Curt. 350.

³ *Benjamin v. The Watchman*, 11 Law Rep. n. s. 40.

⁴ *Davey v. The Mary Frost*, 2 Woods, 306.

⁵ *The Governor Raffles*, 2 Dods. 14; *The Two Friends*, 1 C. Rob. 271, 278; *The Beaver*, 3 C. Rob. 292.

⁶ *The Florence*, 16 Jur. 572; *The Warrior*, 1 Lush. 476; *The Neptune*, 1 Hagg. 227-237; *The Brede*, 30 L. J. Adm. 208.

⁷ *The Florence*, 16 Jur. 572 (by Dr. Lushington).

⁸ *The Two Friends*, 1 C. Rob. 271.

⁹ *The Warrior*, Lush. 476.

¹⁰ *Miller v. Kelly*, Abb. Adm. 564; *The John Perkins*, 9 Law Rep. n. s. 490; 21 Law Rep. 99.

For ordinary exertions in the discharge of their duty the crew are not entitled to salvage.¹

There may be cases in which seamen may be salvors.²

By performing services beyond the line of their duty they become salvors; as when one seaman remains on the wreck after abandonment, and aids in saving her.³

So if a ship be abandoned at sea, and deserted by all her crew except one or two, and these remain on board and save her, or materially assist in saving her, they become salvors.⁴

Seamen may be salvors after their contract of service is dissolved.⁵

They may become salvors, whether the contract is dissolved voluntarily by the master, or by the effect of a *vis major*.⁶

Seamen may become salvors when their connection with the vessel is entirely broken up.⁷

¹ The Two Catherines, 2 Mason, 335; Mason v. The Blaireau, 2 Cranch, 240. And see Giles v. The Cynthia, 1 Pet. Adm. 203; Weeks v. The Catharina Maria, 2 Pet. Adm. 424; Hobart v. Drogan, 10 Pet. 108; The Holder Borden, 1 Sprague, 144; The Wave v. Hyer, 2 Paine, 140.

² The Massasoit, 1 Sprague, 98; The Neptune, 1 Hagg. Adm. 227; The Two Catherines, 2 Mason, 319; Mason v. The Blaireau, 2 Cranch, 240.

³ Mason v. The Blaireau, 2 Cranch, 240; Hobart v. Drogan, 1 Pet. 108; Taylor v. The Cato, 1 Pet. Adm. 48; Clayton v. The Harmony, 1 Pet. Adm. 79; The Two Catherines, 2 Mason, 319.

⁴ Mason v. The Blaireau, 2

Cranch, 240; The Triumph, 1 Sprague, 428, distinguishing The John Perkins, 11 Law Rep. n. s. 87. And see Hobart v. Drogan, 10 Pet. 108.

⁵ Mason v. The Blaireau, 2 Cranch, 240; Hobart v. Drogan, 10 Pet. 122; The Triumph, 1 Sprague, 428; s. c. 11 Law Rep. n. s. 612; The John Perkins, 9 Law Rep. n. s. 490; Cartwell v. The John Taylor, Newb. 341.

⁶ The Olive Branch, 1 Low. 287; Mason v. The Blaireau, 2 Cranch, 240; The Triumph, 1 Sprague, 428; The John Perkins, 21 Law Rep. 87; Phillips v. McCall, 4 Wash. C. C. 147; The Acorn, 3 Ware, 98.

⁷ The Antelope, 1 Low. 130; The Olive Branch, 1 Low. 286.

Extraordinary circumstances may occur, in which their connection with the vessel may be dissolved *de facto*, or by operation of law, in which case they may claim as salvors.¹

Passengers. — It has been laid down that passengers on board a vessel in distress cannot claim salvage for any assistance they render towards preserving the ship and cargo, it being incumbent on all on board to assist, where there is a common danger.²

If the passengers of a vessel that has received injury, but is in no immediate danger, remain on board and assist at the pumps until the arrival of the ship in port, they will not be entitled to salvage.³

A passenger is not, however, obliged to hazard his own safety in order to save the ship or cargo; and if he voluntarily remains on board, and makes extraordinary exertions on behalf of the ship, he will be entitled to be remunerated as a salvor.⁴

And where a passenger took the command of, and brought safely into port, a ship that had been abandoned by her crew, he was held to be so entitled.⁵

In the case of *The Merrimac*, 18 L. T. N. S. 92, a number of troops, who whilst being carried (under a contract with their government) on board a steamer, by severe and organized efforts under the command of their officers kept the vessel afloat after she had sprung a leak, until she was brought into a place of safety, were held not to be passengers, but entitled to salvage reward.

In the case of *Hamilton E. Towle v. The Great Eastern*, 11 L. T. N. S. 516, 2 Maritime Law Cases, Adm.

¹ *Hobart v. Drogan*, 10 Pet. 122; ⁴ *Ibid.*

The Two Catherine's, 2 Mason, 339.

⁵ *Newman v. Walters*, 3 Bos.

² *The Branstons*, 2 Hagg. 3, n.

& P. 612. See also *The Salacia*, 2

³ *The Vrede*, 1 Lush. 322.

Hagg. 262.

148, the "Great Eastern" having, in September, 1861, disabled her paddle-wheels and broken her rudder-shaft in a gale, lay in the trough of the sea for about thirty-six hours, during which time the officers had endeavored in vain to repair the damage, the libellant, a passenger on board, then, with the consent of the captain of the ship, undertook to put into execution a plan which he had devised for steering the ship himself, superintended the work, and succeeded in remedying the difficulty, so that the vessel was brought out of the trough of the sea, and came into port in safety. Shipman, J., held that these services were extraordinary services, for which the court would award salvage compensation to him. The vessel was valued at least at \$500,000. The time occupied in rigging the libellant's apparatus was about twenty-four hours. *Held*, that the case is novel, and but little light can be obtained from precedents in fixing the amount of compensation. On the whole case \$15,000 was awarded. In the above-cited case of *Towle v. The Great Eastern*, the cases of *The Branston*, 2 Hagg. 3, and *The Vrede*, 1 Lush. 322, are discussed.

Passengers and crew, in extraordinary cases only, may be salvors.¹

It is the duty of passengers to contribute to the general safety in the event of a common peril;² and they are not allowed to claim salvage for ordinary labor performed by them;³ but extraordinary services entitle them to salvage.⁴

In the case of the *Barque Mary C. Porter*, United States District Court, District of South Carolina, Ma-

¹ *The Aroma Mills*, 2 Hughes, 40; *The Wave*, 2 Paine, 131.

² *Beane v. The Mayurka*, 2 Curt. 78.

³ *The Merrimac*, 1 Ben. 205.

⁴ *Bond v. The Cora*, 2 Wash.

C. C. 80; *Clayton v. The Harmony*, 1 Pet. Adm. 70.

grath, J. (manuscript, unreported), it is said: "As a passenger, he might earn salvage (*The Waterloo*, 1 Blatchf. & Howl. 136; *The Cora*, 2 Wash. C. C. 80); for the compensation which the law affords that meritorious service is not a perquisite of seafaring men, but may be earned by any who in such times of peril as usually call for the energies of the salvor are able and willing to incur the danger and afford the relief." And the same rule applies in cases of prize. *The Two Friends*, 1 C. Rob. 285.

Ship-owner.—The rewarding of meritorious personal exertions being one of the principal grounds upon which the court of admiralty gives salvage remuneration, it follows, as a general rule, that no one can sustain a suit for salvage who was not personally engaged in the service which formed the foundation of the claim. Where the claimant is proved to have done no more than send other persons to assist the vessel, the court will refuse to recognize his right to participate in the sum which it awards.¹

The owner of a vessel whose crew renders salvage assistance, however, stands upon a different footing. Although he may not have been actively engaged in the undertaking, and may have incurred no personal risk whatever, yet he is almost invariably entitled to participate in any salvage that may be awarded, and to sue the assisted vessel for the recovery of his demand. It has been held that where the salving vessel has either been diverted from her proper employment, or has experienced a special mischief, occasioning to the owners any inconvenience or loss for which an

¹ *The Vine*, 2 Hagg. 1; *The Watt*, 2 Rob. 70; *The Lively*, 3 Aquila, 1 C. Rob. 87. See also *The Rob.* 64.

equitable compensation could be reasonably claimed, he was entitled to salvage.¹

So, where officers or men have left her for the purpose of assisting a vessel that had become short-handed.²

The owner is entitled to share in the reward, even in the absence of any danger. The fact that a vessel has been detained while giving assistance to the distressed vessel is in itself sufficient to support the claim of the owner to a portion of the salvage.³

When the underwriters of a vessel and cargo that had been abandoned hired another vessel, and subsequently succeeded in saving the ship and cargo, they were held entitled to sue as salvors, being looked upon as the owners, for the time being, of the hired ship.⁴

It is difficult to imagine a state of things where salvage assistance is rendered on the high seas, in which the salving vessel has not incurred a risk, disadvantage, or delay sufficient to sustain a salvage claim by the owner; and it also not unfrequently happens, especially in the case of steamships, that the vessel is the principal salvor.

See further, on the subject, title APPORTIONMENT, *post*.

Where the vessel assisting and the vessel receiving assistance belong to the same owner, no salvage remuneration is payable. The rule has been held to apply where the vessel saved, although not the property of

¹ The Vine, *ubi supra*; The Charlotte, 3 W. Rob. 68, 72. Swa. 286; The Sir Ralph Abercrombie, L. R. 1 P. C. 454; The Norden,

² The Janet Mitchell, Swa. 111; 1 Spinks, 185.

The Nicolina, 2 W. Rob. 175. ³ The Norden, *ubi supra*; The Haidee, 1 Notes of Cases, 594.

See also, as to the right of owners to participate, The Martin Luther, Swa. 287; The Spirit of the Age, ⁴ The Pickwick, 6 Jur. 669.

the salving vessel, was chartered by him under a contract which stipulated that he should provide and pay the master and crew.¹

If, however, the possession of the chartered vessel continued in her owner, and did not pass to the charterer, as has been held to be the case where the contract stipulated that the owner should appoint the master and crew, find ship stores, and pay crew's wages, salvage will be payable as in other cases. The circumstance may, however, affect the quantum to be awarded.²

Associated Vessels. — Where vessels sail together under an agreement to render mutual assistance, no salvage remuneration is payable for any services which one of them may render to the other.³

Such an agreement must, however, be clearly established.⁴

Where vessels proceed on the same voyage, leaving port nearly together, and assistance is rendered by one to the other, without deviation from her proper course, the association of the vessels affords no answer to a claim for salvage, although it would affect the amount of remuneration, which, in such a case, would not be considerable.⁵

The fact that a part owner of the salving vessel has also an interest in the vessel salvaged does not disentitle his co-owners to sue for salvage. They must, however, deduct from the value of the entire service the share

¹ The Maria Jane, 14 Jur. 587. The Harriot, 1 W. Rob. 439; The Red Rover, 3 W. Rob. 150; The

² The Collier, L. R. 1 Adm. 83; African, 1 Spinks, 299; The Gravinga, Pritch. Dig. 811; The T. P. Leathers, Newb. 421.

³ The Zephyr, 2 Hagg. 43.

⁴ The Waterloo, 2 Dods. 433-

⁵ The Ganges, 1 Notes of Cases, 87-90; The Two Friends, 8 Jur. 48; The Swan, 1 W. Rob. 68, n.; 1011.

which would have been due to the part owner if he could have joined as plaintiff.¹

Where the salvors get to the vessel in distress by means of boats belonging to a person who does not personally assist in the undertaking, the mere circumstance that his boats enabled the salvors to render the required assistance does not entitle the boat owner to sue as a salvor; and where the crew of a stranded vessel, having taken to their boats, and, in making for the nearest land, fell in with and succeeded in saving a ship that had been abandoned, a claim by the owner for salvage, on the ground that the salvors were enabled to reach the vessel solely by means of his boats, sails, and compass, was rejected.²

But the Supreme Court of New York, in 1860, held that a salvor who takes no part in the salvage service other than to furnish a boat is fully compensated by receiving the value of his boat.³

The court, however, has allowed a person who sent his boats to render salvage services a sum out of the salvage awarded, by way of equitable compensation, for the use of the boats.⁴

Owner of Cargo. — There does not appear to be any case in the English courts of a claim by the owners of cargo on board the salving vessel to participate in the salvage awarded. There are a few such cases in the American reports.

In the case of *Bond v. The Cora*, 2 Peters Admiralty Decisions, 361, confirmed, on appeal, by Washington, Ct. J., 2 Wash. C. C. 80, the owner of the cargo on

¹ The *Caroline*, 1 Lush. 334. And see The *Glengaber*, 3 Law Rep. 349. Adm. & Ecc. 534, where some were owners of the vessel causing the mischief.

² The *Two Friends*, 2 W. Rob.

³ *Hawkins v. Andy*, 32 Barb.

⁴ The *Charlotte*, 3 W. Rob. 68.

board the salving vessel joined in the salvage suit; but the claim was dismissed with costs. (This case occupies twenty-two pages in 2 Peters.)

In the case of *The Ship Nathaniel Hooper*, 3 Sumn. 542, Story, J., in the First Circuit, after deciding on principle that the shipper of cargo is not entitled to salvage earned in the voyage, unless the stoppage and deviation were authorized by him, proceeds, at page 580, as follows: "Thus far the point has been considered on principle. But how stands the case upon practice and authority? In the first place, although the case must be of frequent occurrence in suits for salvage, yet it does not appear that any such general claim has ever been allowed in practice or by courts of justice." And Judge Story commends the decision in *Bond v. The Cora*, *ubi supra*.

In the case of *The Blaireau*, 2 Cranch, 240, the owners of the cargo on board the salving vessel were awarded a proportion of the salvage; but in that case one of the owners consented to the salvage service being performed, and the court seems to have considered that his acts went so far as to charge himself and his co-owners with the hazards to be encountered by the cargo. See the opinion of the court delivered by Marshall, C. J., on page 269 of 2 Cranch.

The American law as to the right of ship-owners to sue for salvage differs in no way from that of England. This will appear from the following cases: —

The owners of vessels whose crews perform salvage services share the salvage compensation,¹ although not present when the service was performed,² solely on

¹ *The Ottawa*, 1 Low. 274; *The* 8 Wall. 448; *The Charles*, Newb. Saragossa, 1 Ben. 553; *The Charles* 833.

Henry, 1 Ben. 8; *The Camauchie*, ² *The Charles Henry*, 1 Ben. 8;

the ground of the risk and damage to which their property is or may be subjected.¹ This applies to owners of ships or vessels, whether propelled by steam or otherwise,² and whether they be individuals or corporations.³

So as to owner of wrecking vessels.⁴

Under ordinary circumstances, they are allowed one-third of the amount awarded as salvage compensation; but where the service was of a character to expose the vessel to a peculiar danger, especially in case of a large steamer and of great value, more may be allowed.⁵

One-half has been awarded to the owners of a steamer, the usual proportion for sailing-vessels being one-third;⁶ and two-thirds has been allowed.⁷

The Camanche, 8 Wall. 448. *Contra*, *The Morning Star*, 6 Blatchf. 154; *The Jack Jewett*, 2 Ben. 463; *The Arlington*, 2 Ben. 511.

¹ *The Camanche*, 8 Wall. 473; *Mason v. The Blaireau*, 2 Cranch, 269; *The Henry Ewbank*, 1 Sumn. 400.

² *Waterbury v. Myrick*, *Blatchf. & H. 34; *Mason v. The Blaireau*, 2 Cranch, 240; *McDonough v. Danery*, 3 Dall. 188; *Bond v. The Cora*, 2 Wash. C. C. 80.

³ *The Camanche*, 8 Wall. 475.

⁴ *The Aroma Mills*, 2 Hughes, 41; *The Camanche*, 8 Wall. 475; *The Blackwall*, 10 Wall. 1.

⁵ *The Camanche*, 8 Wall. 473; *The Rising Sun*, 1 Ware, 378; *The Waterloo*, Blatchf. & H. 114; *The Nathaniel Hooper*, 3 Sumn. 542; *The T. P. Leathers*, Newb. 430; *The Henry Ewbank*, 1 Sumn. 427; *Conckling v. The Harmony*, 1 Pet. Adm. 34; *Bond v. The Cora*, 2 Wash. C. C. 80; *Mason v. The Ship Blaireau*, 2 Cranch, 240; *The Bos-*

ton, 1 Sumn. 328; *The Hudson*, Olcott, 396; *The Cumberland*, 1 Sumn. 427; *The Saragossa*, 1 Ben. 559; *The Charles Henry*, 1 Ben. 12; *The Waterloo*, Blatchf. & H. 124; *Union F. Co. v. The Delphos*, Newb. 421; *The Charles*, Newb. 429. And see *The Camanche*, 8 Wall. 475; *Cromwell v. The Island City*, 1 Cliff. 221; *The Caroline*, 6 Am. Law Reg. 222; *Brooks v. The William Penn*, 1 Am. Law Reg. 484; *Norris v. The Island City*, 1 Cliff. 219; *Adams v. The Island City*, 1 Cliff. 210; *The Omer*, 2 Hughes, 96.

⁶ *The Saragossa*, 1 Ben. 559; *Mason v. The Blaireau*, 2 Cranch, 240; *The Henry Ewbank*, 1 Sumn. 427.

⁷ *The Waterloo*, Blatchf. & H. 134; *Bond v. The Cora*, 2 Wash. C. C. 80. To *The New Harbor Protection Co.*, using gas as well as water and steam, the District Court, Louisiana, Billings, J., allowed three-fourths (cases not reported), and one-fourth to the crew.

The rule allowing salvage compensation to owners is applicable to corporations owning vessels engaged in salvage services.¹

Pilots.—Pilots being bound by the nature of their employment to be always ready to go out to vessels requiring their assistance,—unless it be at the risk of their lives,—cannot, in the absence of exceptional circumstances, entitle themselves to salvage by what they may do in the course of their duty.²

No pilot, however, is bound to go on board a vessel in distress to render pilotage service for mere pilotage reward.³

Pilots have consequently been held entitled to salvage reward for going out to ships in a leaky condition, and rendering assistance in working the pumps, and in laying out and afterwards shipping or recovering an anchor;⁴ and for boarding in boisterous weather and bringing into a place of safety a foreign vessel that had sustained damage.⁵

In extraordinary cases it may be difficult to distinguish a case of pilotage from a case of salvage, properly so called; for it is possible that the safe conduct of a ship into port, under circumstances of extreme

¹ *The Camanche*, 8 Wall. 474; *The Jonge Andries*, Swa. 226-229; *The Blackwall*, 10 Wall. 13; *Adams v. The Island City*, 1 Cliff. 210; *The New Harbor Protection Co. v. The Suliste*, Louisiana Circuit Court, Bradley, Associate Justice, and other cases instituted by the same corporation in the Louisiana district, Billings, J. (all unreported).

² *The Roshaugh*, 1 Spinks, 267; *The General Palmer*, 2 Hagg. 176; *The Joseph Harvey*, 1 C. Rob. 306.

³ *The Frederick*, 1 W. Rob. 16; *The King Oscar*, 6 Notes of Cases, 284; *The Elizabeth*, 8 Jur. 365.

⁴ *The Hebe*, 2 W. Rob. 246.

⁵ *The King Oscar*, 6 Notes of Cases, 284. See also *The Enterprise*, 2 Hagg. 178, n.; *Newman v. Walters*, 3 Bos. & P. 612-616. But see *The Johannes*, 6 Notes of Cases, 288, where a pilot unsuccessfully attempted to obtain salvage for piloting a foreign vessel.

danger and personal exertion, may exalt a pilotage service into something of a salvage service;¹ as in cases of extraordinary peril, and the exercise of gallantry beyond the limits of their duty.²

The circumstances must be such as require efforts, perils to be encountered, labor and skill, out of the line of their duty.³

Regularly authorized and licensed pilots are entitled to compensation for salvage, where their services are extraordinary, and beyond the strict line of their professional duty.⁴

A pilot is entitled to salvage if he renders assistance to a vessel in distress.⁵

By the general maritime law a pilot is not bound to give his services to a vessel disabled and in distress, for mere pilotage.⁶

In the event of a dispute as to whether a signal hoisted was for a pilot, or was a signal of distress, the

¹ *The Wave*, Blatchf. & H. 243; 240; *Phillips v. McCall*, 4 Wash. C. C. 148.

² *Hope v. The Dido*, 2 Paine, 246; *Hobart v. Drogan*, 10 Pet. 108; *Lea v. Alexander*, 2 Paine, 470; *The Benjamin Franklin*, 6 C. Rob. 350; *The Nelson*, 1 Hagg. Adm. 169; *Hand v. The Elvira*, Gilp. 60; *Dulany v. The Peragio*, Bee, 212; *Le Tigre*, 3 Wash. C. C. 567; *The Anne*, 1 Mason, 508; *Lea v. The Alexander*, 2 Paine, 470; *The Two Catherines*, 2 Mason, 336; *Newman v. Walters*, 3 Bos. & P. 612; *Hobart v. Drogan*, 10 Pet. 123; *The Aroma Mills*, 2 Hughes, 40; *The Grace Brown*, 2 Hughes, 112; *The Salacia*, 2 Hagg. Adm. 270.

³ *The Centurion*, 1 Ware, 481; *The Joseph Harvey*, 1 C. Rob. 257; *Le Tigre*, 3 Wash. C. C. 567; *Hobart v. Drogan*, 10 Pet. 108; *The Two Catherines*, 2 Mason, 319; *Mason v. The Blaireau*, 2 Cranch, 240; *Phillips v. McCall*, 4 Wash. C. C. 148.

⁴ *Hope v. The Dido*, 2 Paine, 246; *Hobart v. Drogan*, 10 Pet. 108; *Lea v. Alexander*, 2 Paine, 470; *The Benjamin Franklin*, 6 C. Rob. 350; *The Nelson*, 1 Hagg. Adm. 169; *Hand v. The Elvira*, Gilp. 60; *Dulany v. The Peragio*, Bee, 212; *Le Tigre*, 3 Wash. C. C. 567; *The Anne*, 1 Mason, 508; *Lea v. The Alexander*, 2 Paine, 470; *The Two Catherines*, 2 Mason, 336; *Newman v. Walters*, 3 Bos. & P. 612; *Hobart v. Drogan*, 10 Pet. 123; *The Aroma Mills*, 2 Hughes, 40; *The Grace Brown*, 2 Hughes, 112; *The Salacia*, 2 Hagg. Adm. 270.

⁵ *The Liberty*, Adm. Ct., April 19, 1856, *Shipping Gazette*.

⁶ *The Susan*, 1 Sprague, 501; s. c. 12 Law Rep. n. s. 531; *The Hebe*, 2 W. Rob. 146, 247; *Flanders v. Tripp*, 2 Low. 15; *The Frederick*, 1 W. Rob. 16; *Hobart v. Drogan*, 10 Pet. 108; *The Wave v. Hyer*, 2 Paine, 131; *Hope v. The Dido*, 2 Paine, 243; *Lea v. The Alexander*, 2 Paine, 466; *The Jonge Andries*,

court will determine the fact by reference to the state of the vessel at the time.¹

The true questions in such cases are, What was the condition of the ship? Was she in distress?² And where the vessel is damaged and in a certain degree of distress, the court has uniformly held a signal exhibited under such circumstances to be a signal for assistance, and not for a pilot.³

If a signal is given, and persons go out to render assistance, their services cannot be rejected as unnecessary.⁴

The going to the ship is a part of the service, as much as the labor after arrival.⁵

In 1 Sprague, 502 and 503, Sprague, J., said: "I hold with Dr. Lushington, that a signal made by a vessel in actual distress, and needing other assistance than pilotage, although it be the usual signal for a pilot, shall be deemed a signal for assistance." "A signal of distress is a request for assistance. And if competent persons, upon such request, subject themselves to labor, and danger, and expense, to get on board of the vessel, and there offer their services for such reward as the law will give them, if such offer be rejected it would seem that some compensation should be made for the labor, expense, and danger so incurred; at least in

Sw. 226; s. c. 11 Moore P. C. 313; The Richmond, 3 Hagg. Adm. 431; Love v. Hinckley, Abb. Adm. 436; Hand v. The Elvira, Gilp. 60; The Anders Knafe, L. R. Probate Division, vol. iv. (1879), 213.

* The Otto Hermann, 33 L. J. n. s. Adm. 189, 190; The Felix, 1 Spinks, 23, n.

⁴ The Williams, Brown Adm. 225; The Susan, 1 Sprague, 499; The Undaunted, Lush. 90.

¹ The Hedging, 1 Spinks, 19, 93, n.; The Dosseiter, 10 Jur. 865, 866; The Little Joe, Lush. 88; The Brig Susan, 1 Sprague, 499.

² The Bomarsund, 1 Lush. 77, 78.

³ The Williams, Brown Adm. 218; The White Star, Law Rep. 1 Adm. & E. 68; The Banner, 14 Law Rep. 465; The Susan, 1 Sprague, 400. And see The Graces, 2 W. Rob. 294, 300.

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where the vessel subsequently comes to a place of safety." Vessel and cargo worth \$5,000; salvage, \$250 and costs.

In 2 Sprague, 101, the court said: "The master of the brig testifies that he made the usual signal for steam only and did not set a signal of distress; and it is argued that he had a right to choose whether to accept a salvage service or not. This is true. But when a vessel is in a condition to have a salvage service done to her, and the master makes a signal for a steamer, it is considered as a signal for assistance.

A service which would be pilotage in the case of a duly licensed pilot, may become salvage when rendered by persons under no obligation to perform it.¹

It was formerly held that persons assuming the character and duties of pilots were entitled to be remunerated only as pilots and not as salvors.²

That, however, can no longer be regarded as the state of the law.

A bar-keeper decreed to share with the crew as salvor, that is, to rank as an ordinary hand.³

Where a steamer is engaged to render towage services to a vessel, she is bound by her agreement to do all that is necessary to facilitate the safe voyage of the vessel. She is to take the chance of bad weather which may occasion delay and inconvenience, and for her services in this respect she is entitled only to towage remuneration.⁴

¹ The Rosehaugh, 1 Spinks, 267.

See also The Dygden, 1 Notes of Cases, 115; The Eugene, 3 Notes of Cases, 430.

² See The Columbus, 2 Hagg. 178, n.; The Funchal Baptista, 3 Hagg. 386, n.

³ Adams v. Steamer Natchez and Cargo, by Billings, J., Eastern District of Louisiana, March, 1881 (unreported).

⁴ The Galatea, Swa. 349. See also The Lady Egidia, Lush. 513; The Arthur, 6 L. T. N. s. 556.

SALVAGE.

The state of the wind and weather at the time agreement is entered into is, however, to be taken in consideration in determining the actual nature of the obligation which is undertaken.¹

The law upon this subject was most fully discussed in the case of *The Minnehaha*, both in the court of admiralty and on appeal; and it was laid down in the judgment of the Judicial Committee of the Privy Council.²

The law is that the tug's engagement is not a warranty to tow to destination, but an engagement to use best endeavors; that if *vis major* renders further performance impossible, the tug's obligation terminates; that unforeseen dangers happening to the ship, the tug is entitled to salvage for extra services; that there will be no additional reward where the danger is caused by misconduct, negligence, or incapacity of the tug.

In illustration of the principle as to the right of the tug to extra remuneration for extraordinary services, see *The Minnehaha*, *ubi supra*; *The Albion*, Lush. 282; *The Saratoga*, Lush. 318; *The Annapolis*, Lush. 355.

It is not necessary, to entitle a tug to salvage instead of towage remuneration, that she should have undergone any risk in rendering the extraordinary services.³

If after a towage agreement is made, but before the tug has commenced the performance of her task, an accident should happen to the vessel about to be towed,

¹ *The White Star*, L. R. 1 Adm. 68. See also *The Ellora*, Lush. 550, and *The Galatea*, Swa. 349.

² *The Minnehaha*, Lush. 335-347.

³ *The Pericles*, Brown & Lush. 80, 81.

and the tug renders salvage assistance, she will be entitled to salvage reward for those services.¹

In the absence of any agreement, towage service for towage remuneration ordinarily applies only to cases when the vessel receiving the assistance is uninjured.²

A low rate of salvage should be allowed where the salvors in good weather simply towed a vessel disabled, but in no immediate danger, a distance of thirty miles to a safe anchorage, but incurred no risk of life or property, and no deviation from their ordinary pursuits.³

In *The Charles Adolphe*, Swa. 153-157, Dr. Lushington says: "With regard to the claim of the steamship, she performs a service to a vessel disabled and in distress, and taking her in tow cannot by possibility be compared to an ordinary towage service." See also *The Ellora*, Lush. 550; *The Batavier*, 1 Spinks, 169.

Service rendered by a steamer, in the course of its regular pursuit, in towing and relieving a vessel, under circumstances of no unusual danger to life or property, and without the exercise of unusual activity, enterprise, or heroism, should not be regarded as meriting a reward out of all relation and proportion to what would have been accepted upon a contract contingent upon success.⁴

Steamers have been held entitled to mere towage, the vessel towed being in no danger.⁵

¹ *The William Brandt*, 2 Notes of Cases, Supp. 67.

² *The Reward*, 1 W. Rob. 174-177.

³ *The Bolivar v. The Chalnette*, 1 Woods, 397, by Bradley, Circuit Justice.

⁴ *The Birdie*, 7 Blatchf. 243;

The H. B. Foster, Abb. Adm. 235. See *P. P. M. & W. Co. v. The Steamboat H. C. Yeager*, 1 Fed. Rep. 285; *Mayo v. Clark*, 1 Fed. Rep. 735; *Corwin v. The Barge Jonathan Chase*, 2 Fed. Rep. 268.

⁵ *The Princess Alice*, 3 W. Rob.

138; *The Harbinger*, 16 Jur. 729;

The concealment from the tug, by the master of the vessel to be towed, of her damaged condition, may entitle the tug to repudiate the towage agreement, and to sue for salvage.¹

To sustain the repudiation of the agreement, there must have been a deliberate concealment of circumstances important in themselves, and of such a nature as to operate to the injury of the owners of the tug in the performance of her task.²

And where the owners and crew of a tug alleged the agreement for towage invalid by reason of the fact of the illness of a great part of the crew of the vessel saved having been withheld from them, but failed to prove that the property had been in any danger, the court pronounced for the agreement, and dismissed the claim with costs.³

A steam-tug is not bound to take a vessel in tow, at extraordinary risk to herself and crew; and if she do so, it is a salvage service, and not mere towage.⁴

Services by a tug engaged in the wrecking business are salvage services.⁵

Towing may be a salvage service when performed in aid of a vessel in distress.⁶

So where a steam-vessel has lost the use of her ma-

The Lady Egidia, Lush. 513; *The Galatea*, Swa. 349.

¹ *The Kingalock*, 1 Spinks, 263.

² *The Jonge Andries*, Swa. 226.

³ *The Canova*, L. R. 1 Ad. 54.

⁴ *Roff v. Wass*, 2 Sawyer, 394; *The Wave*, 2 Paine, 131; *Blatchf. & H.* 235; *The Alexander*, *Blatchf. & H.* 406; *Le Tigre*, 3 Wash. C. C. 567; *Hobart v. Drogan*, 10 Pet. 108; *The Foster*, Abb. Adm. 222; *The Emily B. Souder*, 7 *Blatchf.* 555; *The Charlotte*, 3 W. Rob. 68; *The*

Reward, 1 W. Rob. 174; *The Charles Adolphe*, Swa. 153.

⁵ *The Birdie*, 7 *Blatchf.* 238.

⁶ *The H. B. Foster*, Abb. Adm. 222; s. c. 6 N. Y. Leg. Obs. 223; *The Reward*, 1 W. Rob. 176; *The Graces*, 2 W. Rob. 294; *The Meg Merrilies*, 3 Hagg. Adm. 346; *The Jane*, 2 Hagg. Adm. 338; *The Traveller*, 3 Hagg. Adm. 370; *The London Merchant*, 3 Hagg. Adm. 401.

chinery, although she is sound in hull and masts, and has the use of her sails, the towing is a salvage service.¹

In the case of the *Frank A. Hall*, United States District Court, District of South Carolina, Magrath, J. (not reported), it is said that if the vessel, though disabled, is manageable, and receives assistance, not with the purpose of being saved from loss, but for expedition, the fact of being disabled will not of itself make the service salvage.

A steam-tug having, through her own fault, set a schooner on fire, has no claim for salvage for putting the fire out.²

Assistance rendered by a steam-tug, carrying the fire-department engines, in extinguishing a fire in a vessel lying at anchor in port, is a salvage service.³

Services rendered after reaching a port of safety in towage, to where repairs could be made, are towage, and not salvage services.⁴

Where a bark laden with cotton, and anchored outside the bar, took fire, and as the only means of saving ship and cargo she was towed by salvors into shallow water and filled and sunk, and her hull and cargo were afterwards sold in that condition, — it was held that the sum which they brought at the sale was the measure of

¹ *The Saragossa*, 1 Ben. 551; *The Charles Adolphe*, Swa. 153; *The Reward*, 1 W. Rob. 177; *The Charlotte*, 3 W. Rob. 71 (but in *The Emily B. Souder*, 15 Blatchf. 185, before Waite, C. J., Southern District of New York, the service rendered in this case by a steamer, in towing another steamer which had lost the use of her steam-power, but which was otherwise in good order, and had the use of her sails, and was not in danger or distress, was

held to be a towage service, and not a salvage service).

² *The Prince Albert*, 5 Ben. 386; *The Iola*, 4 Blatchf. 31; *Cargo ex Capella*, Law Rep. 1 Adm. & E. 356; *The Robert Dixon*, Probate Division, 4 Law Rep. 121 (1879).

³ *The Blackwall*, 10 Wall. 1; *The Rosalie*, Spinks, Ecc. & Adm. 185; *The Eastern Monarch*, Lush. 81; *The Tees*, Lush. 505.

⁴ *The W. F. Garrison*, 1 How. 139.

the salved property, and that salvage should be allowed on that basis.¹

Ship's Agent claiming Salvage.—The acceptance of an agency for the ship from the master or owner does not disqualify the agent from maintaining a suit for salvage, in respect of any service of that nature which he may render during the course of his employment. Strictly speaking, however, such services are to be regarded rather in the light of a meritorious agency, than as salvage.²

The fact that the claimant acted as Lloyd's agent at the port where the services were rendered, will not disentitle him to sue for salvage.³

If a magistrate, acting in his public capacity, should go beyond the limits of his official duty in giving extraordinary assistance, he is entitled to salvage reward.⁴

If a collector or other revenue officer, intending to act in the line of his duty, but mistaking the law, and transcending his authority, is the meritorious cause of saving property to the owner, he is not precluded, on account of the motive which actuated him, from claiming salvage.⁵

Officers and seamen of her Majesty's vessels, who render salvage services and encounter personal risk, stand on the same footing as other salvors.⁶

¹ *Hayden v. The Cochrane*, 3 W. Rob. 181. But see *The Lively*, Woods, 304. 3 W. Rob. 64.

² *The Favorite*, 2 W. Rob. 255-259; *The Watt*, 2 W. Rob. 70. See *The Purissima Concepcion*, 3 W. Rob. 181, 182; *The Happy Return*, 2 Hagg. 198; *The Cargo ex Honor*, L. Rep. 1 Adm. 87; *The Vesta*, 4 Irish Jur. 219.

³ *The Purissima Concepcion*, 3

The Aquila, 1 C. Rob. 37-46.

⁵ *Le Tigre*, 3 Wash. C. C. 567.

⁶ *The Wilsons*, 1 W. Rob. 172. See *The Alma*, 1 Lush. 378; *The Louisa*, 1 Dods. 317; *The Ewell Grove*, 3 Hagg. 209; *The Rosalie*, 1 Spinks, 188; *The Mary Pleasants*, Swa. 224; *The Thetis*, 3 Hagg. 14;

The American law cannot be said to differ in any material respect from that of England with respect to salvage services rendered by seamen connected with the ships of war of the United States.

The American courts lean, as does the court of admiralty in England, against salvage claims by these vessels where the services have been slight or unimportant.¹

It has been held that the officers and crew of a foreign vessel of war are entitled to claim as salvors.²

The right to salvage reward is what the law calls *jus liquidissimum*, the clearest general right that they who have saved lives and property at sea should be rewarded for salutary exertions; and those who say that they are not bound to award, ought to prove their exemption in very definite terms, and by arguments of irresistible cogency.³

Salvage by the naval marine is to be compensated in like manner as by the private marine.⁴

In the case of *The Steamship Huntsville*, United States District Court, District of South Carolina, Magrath, J. (not reported), the court held that, under the circumstances of that case, the second libellants, viz. the Phoenix Fire Engine Company and others, were entitled to salvage reward for their services in extinguishing the fire on the "Huntsville."

The opinion is very elaborate, and I am unable to do

The Mary Ann, 1 Hagg. 158; *The Beaver*, 3 C. Rob. 292; *The Lustre*, 3 Hagg. 154; *The Iodine*, 3 Notes of Cases, 140; *The Charlotte Wylie*, 5 Notes of Cases, 4; *The Cargo ex Woosung*, 17 Moak, 559, May 4, 1876.

¹ *The Josephine*, 2 Blatchf. C. C. 322, Mr. Justice Nelson.

² *Robson v. The Huntress*, 2 Wall. Jr. Rep. 59.

³ *The Waterloo*, 2 Dods. 433; *The Sappho*, 3 Law Rep. Adm. & E. 147, July 27, 1870.

⁴ Claim of Captain of *The Iris*, 5 Op. Att.-Gen. 116 (Reverdy Johnson).

it justice by any abstract consistent with my desire to produce an easily portable and purchasable book. But, as the case is not reported elsewhere, the following comparatively brief statement of it may be of service.

The first salvors were Davis and others, owners of the "Nina."

They rescued the vessel from stranding, and towed her to the city of Charleston. But she was still exposed to a greater peril than that from which they had relieved her, viz. that of fire. The testimony establishes that the fire was the greater peril, even when she was ashore.

When the "Huntsville" reached the city of Charleston, it was because the mayor of the city had signified his assent to the application made to him for that purpose. He had signified that assent, among other considerations, upon the express condition that the fire department would take under their charge the burning vessel, protect from the danger of conflagration adjacent property in the city, and surrender all claim to compensation from the city for the services they might render.

The court held that the fire department did not, because of the introduction of that vessel under the circumstances of the case, become remitted to their specific legal duties; that there was, for all the purposes of that occasion, by mutual consent, a suspension of the relation which existed between the fire department and the city; that the claim which the "Huntsville" did present was to be allowed the opportunity of being saved, not that the city of Charleston should pay the expense of saving her. It was not the aid of the city treasury she needed. The court also held, that had the "Huntsville" been moored, without some such understanding as did take place, then would a

fixed legal duty have been devolved upon the fire department, and a fixed legal liability by the city of Charleston would have arisen.

From these and other considerations set forth in the decree the court overruled the objection made to the fire department, that they were in the discharge of a prescribed legal duty for the performance of which there is a prescribed legal provision for its discharge, and that this prevents them from making the claim set up by them in that court.

It was also objected that the service performed by the fire department was not in its nature maritime; that it cannot be considered salvage, and therefore not within the jurisdiction of the court.

But Judge McGrath held that the fact that the service was rendered from the land to a vessel within the admiralty and maritime jurisdiction of the courts of the United States is not sufficient to deprive it of the character of salvage, if the other circumstances necessary to be found in such cases also exist.

If the service has been rendered on the land to goods which are on the land, but which have been saved or brought from the sea, it would undoubtedly be a case of salvage. *The Centurion*, 1 Ware, 477. In cases called mixed, where the service is performed partly on tide-water and partly on the shore, jurisdiction of such, as cases of salvage, has been affirmed by the Supreme Court. *United States v. Coombs*, 12 Pet. 72; *American Insurance Co. v. Canter*, 1 Pet. 511. That where the service is performed wholly on the shore, in relation to goods cast ashore from a wreck, it will be regarded as a salvage service, and of it this court will entertain jurisdiction, was held in the case of *Stephens v. The Ship Argus, Bee*, 171.

It was the continuation and completion of the service commenced by the first libellants, and comes directly within that class of mixed cases, the jurisdiction of which has been declared by the Supreme Court to be rightfully exercised in these courts. And if it were not so, that this service is connected with that rendered by the first libellants, but is considered as independent of all others, it would yet be a service rendered from the land to a vessel, the locality of which was within the admiralty and maritime jurisdiction given to this court. And if all the agencies employed were on the land, yet when these were exercised to afford aid to a vessel within that jurisdiction which belongs to this court, there is no principle by which this court can refuse to recognize it. In *The Aquila*, 1 C. Rob. 46, Sir William Scott did not refuse to recognize the magistrate as a salvor, because the service which he claimed to have rendered to a vessel was rendered by him upon the land, but because it was precisely what he was bound to do. And the case contains a very clear intimation, that if the magistrate had done more, he would or might have been rewarded as a salvor.

SECTION III. — DIFFERENT SETS OF SALVORS.

It sometimes happens that different sets of salvors claim remuneration in respect of the same service.

The decisions in such cases will be found mainly to depend upon whether the property saved was or was not derelict at the time the services were rendered ; and if derelict, whether the salvors first in possession could, unassisted, have completed the undertaking upon which they had entered.

If the vessel in distress has not been abandoned by

her master and crew, there can be no great difficulty in determining which set of salvors will be recognized by the court. The master of the vessel, whilst he continues on board, is entitled to retain the command and control of the ship and cargo, and to direct the work of the salvors, who are little more than assistants and laborers under him. He may reject the help of persons whom he does not think fit to employ, and those whom he does employ are bound to obey his orders.¹

If other salvors dispossess those whom the master has employed, and force their own services upon him, the court will refuse to award them any remuneration.²

Nor is the master's authority, in this respect, affected by the circumstance that he and his crew leave the vessel for the purpose of procuring assistance.³

Legal Derelict. — Where the vessel salvaged is a derelict, then the salvors who are first in possession, if capable of saving the property, are entitled to complete the salvage, and to exclude others from joining in it.⁴

A vessel is said to be derelict, in the sense of the maritime law, when she has been abandoned at sea by her master and crew, without any hope of returning.⁵

If the master and crew leave her temporarily, without any intention of final abandonment, but with the intention of returning and resuming possession, such a vessel is not to be considered a derelict, nor is the right of possession lost by such temporary absence, although

¹ The Dantzic Packet, 3 Hagg. 1881, Circuit Court, Louisiana District.

383; The Champion, B. & Lush. 69; The Glasgow Packet, 2 W. Rob. 306; The Martha, Swa. 489; The Effort, 3 Hagg. 165; The Choteau, Pardee, J. (not reported), June,

² The Fleece, 3 W. Rob. 218.

³ The Champion, B. & L. 69-71.

⁴ The Maria, Edw. 175.

⁵ The Aquila, 1 C. Rob. 37.

no one may be remaining on board the vessel for the purpose of retaining possession.¹

The *onus* of proving the intention to return rests upon the owner of the vessel, for, *prima facie*, a vessel found at sea in a position of peril, and without having any one on board, is a derelict.²

If a master and crew leave their vessel for the safety of their lives, a mere intention of sending a steamer to look for her does not take away from the vessel its character of a legal derelict.³

Dr. Lushington said: "When we speak of the *spes recuperandi*, we mean the hope and expectation entertained by the master and crew of returning to their vessel; not what was the precise state of things, but what was the intention by which they were actuated at the time."⁴

If, at the time the vessel is left, there is no *animus* or *spes* either way, the vessel is not a derelict.⁵

The law of derelict is elaborately reviewed in this case. See also *The Fenix*, Swa. 13, where abandonment at time of collision was held not to constitute a vessel a legal derelict.

Where, however, a vessel in a collision was left abandoned for three days, she was held to be a legal derelict.⁶

¹ *The Clariase*, Swa. 129. See also *The Aquila*, 1 C. Rob. 37; *The Bee*, Ware, 336; *Rowe v. The Brig* —, 1 Mason, 372; *Tyson v. Prior*, 1 Gall. 133; *The Island City*, 1 Black, 121; *Williams v. The Cargo of The Adolphe*, 19 Am. Jur. 219; *The Hercules*, 8 Irish Jur. 412. See also *The Fenwick*, Pritch. Dig. 824; *The Mary*, Pritch. Dig. 824.

² *The Cosmopolitan*, 6 Notes of Cases, Supp. 17-19.

³ *The Coromandel*, Swa. 205. See also *The Gertrude*, 30 L. T. Adm. 130.

⁴ *The Sarah Bell*, 4 Notes of Cases, 144.

⁵ *The Cosmopolitan*, 6 Notes of Cases, Supp. 17.

⁶ *The Pickwick*, 16 Jur. 662, 676. See also *The Livingstone*, Pritch. Dig. 824.

The position in which the vessel was at the time of abandonment is some evidence as to the intention of the master and crew at the time of leaving.¹

Where the crew of a vessel were drowned after they had abandoned her, but before they reached the shore, and it consequently was impossible to say whether they had a *spes recuperandi* or not, Dr. Lushington held that in every sense, legal or otherwise, the vessel was to be considered a derelict.²

A ship or goods sunk in the sea are generally derelict. They are not so, however, as long as the owner continues to assert his claim, and does not give up the intention of resuming the possession.³

A vessel may be considered a derelict so far as the amount of the salvors' remuneration is concerned; that is to say, abandoned *sine animo recuperandi*.⁴

Salvage, as in the case of a derelict, has been awarded even where the abandonment took place simultaneously with the salvage of the cargo.⁵

The courts of the United States have acted upon these principles; and as regards the remuneration of salvors they have held that where a vessel at sea, though not abandoned, has on board only persons both physically and mentally incapable of doing anything for their safety, this constitutes a case of *quasi* derelict, and calls for a liberal compensation to salvors, especially if life as well as property has been saved.⁶

A vessel with slaves on board, but no white person,

¹ The Florence, 16 Jur. 572, 573. See The Genessee, 12 Jur. 401.

² The Minerva, 1 Spinks, 271. Also L'Esperance, 1 Dods. 46; The Berlin, 3 Irish Jur. n. s. 34.

³ The Barefoot, 14 Jur. 841; The Beaver, 3 C. Rob. 292; The Samuel, 15 Jur. 407. See The Thetis,

3 Hagg. 14; The St. Petersburg, Pritch. Dig. 824; The Sophie, Pritch. Dig. 824.

⁴ The Genessee, 12 Jur. 401, 402.

⁵ The Columbia, 3 Hagg. 428.

⁶ The George Nicholas, 1 Newb.

449.

was considered a derelict, and one-third given to the person bringing her in.¹

Where the master and crew left their vessel in a sinking condition, and were picked up by another vessel while yet in sight of the wreck, the vessel and cargo thus left were held to be derelict.²

To constitute a case of derelict, the thing must have been finally abandoned, whether from accident, from necessity, or voluntarily.³

The vessel must have been finally abandoned,⁴ without hope of recovery, or without the intention of returning to it.⁵ The mere quitting of the ship to procure assistance from the shore, and with intent to return, is not an abandonment.⁶

The true rule for awarding salvage in cases of derelict is this: Divide the proceeds which remain over all costs and disbursements of the salvage suit equally between the salvors and the owners of the rescued property, giving to each of these interests a moiety.⁷

¹ Flinn v. Leander, Bee, 260.

² The Boston, 1 Sumn. 328.

³ Rowe v. The Brig —, 1 Mason, 372; Tyson v. Prior, 1 Gall. 133; The Jenny Lind, Newb. 449; Montgomery v. The T. P. Leathers, Newb. 421; The Ida L. Howard, 1 Low. 7; The John Gilpin, Olcott, 77; The Sarah Bell, 4 Notes of Cases, 147. And see Taylor v. The Cato, 1 Pet. Adm. 50, distinguishing The Aquila, 1 C. Rob. 32.

⁴ Tyson v. Prior, 1 Gall. 133; Rowe v. The Brig —, 1 Mason, 372; The Island City, 1 Black, 121.

⁵ The Bee, 1 Ware, 332; The Elizabeth and Jane, 1 Ware, 85; Tyson v. Prior, 1 Gall. 133; The Boston, 1 Sumn. 328; The Emulous,

1 Sumn. 210; The Henry Ewbank, 1 Sumn. 400; Cromwell v. The Island City, 1 Cliff. 224; The H. B. Foster, Abb. Adm. 222; Rowe v. The Brig —, 1 Mason, 372; The Attacapas, 3 Ware, 65; Montgomery v. The T. P. Leathers, Newb. 426; The Aquila, 1 C. Rob. 32; Carroll v. The T. P. Leathers, Newb. 433; Flinn v. The Leander, Bee, 260; L'Esperance, 1 Dods. 46.

⁶ Cromwell v. The Island City, 1 Cliff. 224; The Boston, 1 Sumn. 328; The Beaver, 3 C. Rob. 92; The Barefoot, 1 Eng. L. & E. 661; The Emulous, 1 Sumn. 210.

⁷ The Cayenne, Dist. Ct., Dist. of Delaware, October Term, 1870, 2 Abbott U. S. R. 42.

But it has been held that the same rules should be followed in cases of derelict as in other salvage cases.¹

First Salvors favored.— Assuming the vessel to be derelict in the legal sense of the word, as laid down in the foregoing decisions, and in the possession of salvors competent to bring her into a position of safety, the court of admiralty will protect the rights of such first salvors with some jealousy, and it will refuse to allow those who, without sufficient cause, dispossess them to participate in the salvage.² *The Samuel*, 15 Jur. 407; *The Queen Mab*, 3 Hagg. 242; *The Glasgow Packet*, 2 W. Rob. 306; *The Glory*, 14 Jur. 676; *The Amethyst*, Daveis, 20. See also *A Quantity of Iron*, 2 Sprague, 57.

The exclusion of second salvors is to be cautiously applied.³

It is a maxim, common to the jurisprudence of all countries, that no one is permitted to profit by the labor of another, without compensating him for it. *Jure naturæ æquum est, neminem cum alterius detrimento et injuria fieri locupletiores.* On this principle, the Roman jurists held, that he who acted for another by transacting his business, or by making repairs on his property, could recover the amount of the expenses incurred, or the value of the repairs; provided the acts of the *negotiorum gestor* were necessary and useful to the person for whom he acted.

This doctrine has descended to us, and makes a part of the positive legislation of the State of Louisiana.

¹ See *Post v. Jones*, 19 How. 150. *Mary*, 2 Wh. 123; *The Brig John Gilpin*, Olcott, 77. See also *The Eugenie*, 3 Hagg. 156.

² *The Blendenhall*, 1 Dods. 414, 418. See also *The Fleece*, 3 W. Rob. 278; *The Charlotte*, 2 Hagg. 361; *The Clarisse*, Swa. 129; *The*

The Blendenhall, *ubi supra*; *The Eugenie*, 3 Hagg. 156; *The Pickwick*, 16 Jur. 669, 670.

Dig. Liv. 50, tit. 17, L. 206 ; Dig. Liv. 3, tit. 5, L. 10 ; Toullier, *Droit Civil Français*, vol. ii. tit. 4, cap. 1, No. 49. It is in consonance with the established principles of maritime law to hold those beginning a salvage service, and who are in the successful prosecution of it, entitled to be regarded as the meritorious salvors of whatever is preserved, and entitled to the sole possession of the property. 1 *Ld. Raym.* 393 ; 2 *H. Black.* 294 ; 8 *East*, 57 ; 1 *Dods.* 417 ; 2 *Hagg.* 361 ; 3 *Hagg.* 160, 167, 243 ; *Edwards*, 175. And the same would seem to follow, even if they have been wrongfully interrupted or intercepted in the work by others, who complete the salvage, and bring in the salvaged property. *The Brig John Gilpin*, *Olcott*, 86.

Where the assistance of the second salvors was beneficial rather than absolutely necessary, they have been awarded salvage.¹

The court, although it protects salvors against improper interference, at the same time requires them to avail themselves of further assistance, whilst the success of their efforts remains doubtful ; and where they improperly refuse that assistance, the court will award to them a less sum than it otherwise would have given.²

Abandonment by First Salvors. — If the first of two sets of salvors abandon the enterprise without any intention of resuming it, and the other set afterwards enter upon the service, and bring it to a successful issue, they will be entitled to the whole salvage.³

¹ *The Charlotta*, 2 *Hagg.* 361. *Elizabeth*, *ubi supra* ; *The Gudrun*, See also *The Berlin*, 3 *Irish Jur.* 34 ; *ubi supra* ; *The Dosseitei*, 10 *Jur.* 865. *The Gudrun*, 5 *Irish Jur.* n. s. 361 ; *The Magdalen*, 31 *L. T. Adm.* 22 ; *The Elizabeth*, 8 *Irish Jur.* 340.

² *The Glory*, 14 *Jur.* 676. See also *The Berlin*, *ubi supra* ; *The Columbia*, *Pritch. Dig.* 767 ; *The*

³ *The India*, 1 *W. Rob.* 406. See also *The Clarisse*, *Swa.* 129 ; *The Cosmopolitan*, 6 *Notes of Cases*, *Supp.* 17 ; *The John Wurts*, *Olcott*, 469

If, however, the first set leave the vessel for the purpose of procuring assistance, and without the intention of abandoning the undertaking, they may be awarded salvage for anything they may have done beneficial to the vessel, or which might have rendered the salvage easier or more practicable to those who subsequently complete the service.¹

When valuable service has been performed which renders the final saving of property more valuable or easy, continued exertion is not necessary to entitle the original salvors to a portion of the salvage awarded.²

Where a tug-boat and the river salving-boat both come to the relief of a steamer on fire at a pier, *held*, that the river salving-boat, by throwing water on the vessel in danger, rendered meritorious service and of value to the salved vessel.³

Distribution between Rival Salvors. — It has been held that when salvors fall into distress, and are, together with the salved property, saved by another vessel, the second salvors in such a case are entitled to a portion, but not the whole, of the salvage reward.⁴

And in this case Story, J., held, that if the second salvors make it a condition of their rendering assistance that the first set shall abandon their claims to salvage, such a bargain would, in the awarding of the remuneration, be disregarded by the court.

Where there are different sets of salvors acting inde-

¹ The E. U., 1 Spinks, 63, 66; 1 Black, 121; The Underwriter, 4 The Genessee, 12 Jur. 401; The Blatchf. C. C. 94.

Jonge Bastiaan, 5 C. Rob. 322. See ² The Tolomeo, 7 Fed. Rep. 497 (1881).

also The Santipore, 1 Spinks, 231; ³ The Key West, 11 Fed. Rep. 911, Nov. 23, 1881, by Pardee, Ct. J., The Magdalen, 31 L. T. 22; The Atlas, Lush. 518; The Endeavor (Colby v. Watson), 6 Notes of Cases, 56; The Albion, 3 Hagg. 254; The reported by Joseph P. Hornor, Esq., of the New Orleans Bar.

Brothers, Bee, 136; The Island City, ⁴ The Ewbank, 1 Sumn. 400.

pendently of each other, the misconduct of one set will not affect the claims of the other, if they had no participation in it.¹

Where salvage was claimed by one set of salvors for getting a vessel off the sand, and by another for getting up her anchors (which had slipped) after she was clear of the sand, the court held that the salvors of the anchors were not entitled to share in the general salvage of the vessel.²

For instances of apportionment between different sets of salvors, see *The Santipore*, 1 Spinks, 231; *The Magdalen*, 31 L. T. Adm. 22; *The Pickwick*, 16 Jur. 669; *The Jonge Bastiaan*, 5 C. Rob. 323; *The Genessee*, 12 Jur. 401. See also title APPORTIONMENT, *post*.

A not very dissimilar question arose in the case of *A Box of Bullion*, 1 Sprague, 57.

Where the property is actually saved, and more than one set of salvors have contributed to that result, all engaged in the enterprise who materially contributed to the saving are entitled to share in the reward, in proportion to the nature, duration, risk, and value of the services rendered;³ although the separate service of either set would not have saved the property.⁴

In the case of *The Ship Liberty and Cargo*, in the vice-admiralty court of Nassau, N. P. (Bahamas), pamphlet, November, 1860, J. C. Lees, judge of the court, said: "*It is true that, in awarding salvage remuneration, I never do take into consideration the actual number of vessels employed. I merely give such sum as I think would be a fair compensation to the number of vessels really required.*"

Rival Salvors. — From a pamphlet published in 1861

¹ *The Neptune*, 1 W. Rob. 297. Cliff. 219; *Dominy v. Anchors, &c.*,

² *The Endeavor*, 6 Notes of Cases, 1 Ben. 77; *The Blackwall*, 10 Wall. 1. 56.

⁴ *Adams v. The Island City*, 1

³ *Norris v. The Island City*, 1 Cliff. 210; affirmed, 1 Black, 121.

I extract the following, from a decision by Judge Marvin, of the District Court of the United States, Southern District of Florida, in the case of *The Ocean Belle*. This decision is not contained in Judge Marvin's treatise on the Law of Wreck and Salvage, which was published in 1858.

Five smacks, of the aggregate burthen of 188 tons, and carrying in all thirty-two men, arrived at the ship a day after the eight wrecking vessels, and a day or two before the steamer. They were at the ship tendering their services at the time the steamer was employed. They claim that they were entitled to be employed before the steamer; that they were unjustly excluded from rendering salvage services, and are equitably entitled to a distributive share of the salvage earned. The rule of the High Court of Admiralty on this subject seems to be that all persons coming up together, or about the same time, to render assistance to a ship in distress, are entitled to share in the salvage, although a part only are actually employed. *The Mountaineer*, 2 W. Rob. 7. The rule in this court is "that licensed wrecking vessels are entitled to be admitted to assist at a wreck or ship in distress in the order in which they arrive, if further assistance is needed, unless some good cause exists for the contrary; and the master of any wrecking vessel, deeming his vessel and crew excluded without sufficient cause, is at liberty to apply to the court, by petition, for a distributive share of the salvage." This rule is obviously just in itself, and sound in policy. . . . It is to be observed, however, that neither the rule nor any decision of the court interferes with the right of the master to employ one wrecking vessel in preference to another. Its effect is to protect him against an attempt by any wrecker to corrupt him, by taking away the inducement, and he is left every way free to employ any vessel he pleases. But when the wreckers come before the court to recover their salvage, he can properly have no interest beyond the amount to be decreed for the whole service. With the distribution of that amount among the salvors he has no concern. If no im-

proper influences are brought to bear upon him he will ordinarily employ the wrecking vessels, if adapted to the service required, in the order in which they arrive, for this is obviously just; and if he employs them in any other order, unless his reasons for doing so are satisfactory to the court, it may fairly be inferred that improper influences have been exerted upon him by some of the salvors to the disadvantage of others. Such improper influences are not to be tolerated.

SECTION IV. — AMOUNT OF SALVAGE.

The amount to be awarded to salvors rests entirely in the discretion of the court, and depends upon the circumstances of the case.

Although, as will readily be seen, no fixed rule can be laid down upon the subject,¹ still there are certain general principles which influence the court in fixing the amount to be awarded. The court, as a general rule, will take into consideration all the facts of the case, the state of the weather at the time the services were rendered, the degree of damage, and danger to the ship and cargo, the risk and peril incurred by the salvors, the time occupied, and the value of the property. The amount awarded generally far exceeds a mere remuneration for work and labor, the excess being intended, upon principles of sound policy, not only as a reward to the particular salvor, but as an inducement to others to undergo risk and peril in the rescue of property in danger.²

The court will not, however, fail to guard against

¹ *The Cuba*, 1 Lush. 15.

N. s. Adm. 189, 190; *The Albert*,

² *The Industry*, 3 Hagg. 203, *ib.*; *The Ella Constance*, *ib.*; *Sonderburg v. The Tow Boat Co.*, 3 117; *The Otto Hermann*, 33 L. J. Woods, 143, by Bradley, Justice.

exorbitant demands, and an undue advantage being taken of distress.¹

Exorbitant contracts for compensation of salvage services will not be enforced.²

Compensation is awarded, not upon the idea of a *quantum meruit*, but by way of rewarding the service in proportion to the degree of merit in each particular case.³

The reward should be not only an ample remuneration for the risk of life and property, and for labor, privations, and hardships encountered, but so liberal as to furnish an incentive to similar exertions by others.⁴

This is based upon the enlarged principles and policy of maritime jurisdiction in salvage causes.⁵

The amount varies with the hazard, trouble, and expense incurred in each particular case.⁶

It varies also with the fatigue, anxiety, determination to encounter dangers, the spirit of adventure, skill, and dexterity.⁷

¹ The Hector, 3 Hagg. 90-95. Towboat Co. v. The Delphos, Newb. See also The Sarah, 1 C. Rob. 318, 412; McGinnis v. The Pontiac, 5 n.; The Wm. Beckford, 3 C. Rob. McLean, 388; Hand v. The Elvira, 355; The Fusilier, 10 L. T. n. s. Gilp. 60; The Henry Ewbank, 1 699; The Emulous, 1 Sumn. 210; Sumn. 400.
² The Henry Ewbank, 1 Sumn. 400; ⁵ The Narragansett, Olcott, 390; Fritz v. Bull, 12 How. 466; The Industry, 3 Hagg. Adm. 202; Genesee Chief, 12 How. 443; The Bearse v. Pigs of Copper, 1 Story, Blaireau, 2 Cranch, 266. 314.

³ The Homely, 8 Ben. 495.

⁴ The John E. Clayton, 4 Blatchf. 372; Hand v. The Elvira, Gilp. 60; The Wm. Beckford, 3 C. Rob. 286.

⁶ Warder v. La Belle Creole, 1 Pet. Adm. 31; Bond v. The Cora, 2 Wash. C. C. 80; Bearse v. Pigs of Copper, 1 Story, 314; The Emulous, 1 Sumn. 207; Conlon v. The Neptune, 2 Pet. Adm. 356; Union

⁷ Weeks v. The Catharina Maria, 2 Pet. Adm. 422; Barrels of Oil, 1 Sprague, 91; s. c. 7 Law Rep. 377; The Narragansett, 1 Blatchf. 211; Taylor v. The Friendship, Bee, 175.

⁸ Hand v. The Elvira, Gilp. 60; The Wm. C. Beckford, 3 C. Rob. 286; Barden v. The Wm. Penn, 2 Hughes, 145.

It varies also with the actual danger.¹

The amount of salvage awarded must necessarily rest in a sound discretion, to be exercised according to the circumstances in each case.²

The decree may be for more than is demanded.³

In a case where Dr. Lushington refused to be influenced by the decision of arbitrators in regard to another ship, he said that Lord Stowell, in a case where the salvors themselves had claimed too little, held they were not restricted to their own demand.⁴

The court is not influenced in any way by the amount of claim made by the salvors. Lord Stowell once gave a larger amount than that at which the action was entered.⁵

It is increased as an incentive and premium.⁶

It is also increased to encourage others to save property in distress.⁷

"The spirit of the rule which governs salvage awards requires that while they should not be extravagant, they should always be generous."⁸

¹ The *M. B. Stetson*, 1 Low. 122; The *Princess Alice*, 3 W. Rob. 138; The *Georgiana*, 1 Low. 93; *Post v. Jones*, 19 How. 150; The *Deveron*, 1 W. Rob. 180.

² The *Charles*, Newb. 337; *Hand v. The Elvira*, Gilp. 60; *Talbot v. Seeman*, 1 Cranch, 1; The *Rising Sun*, 1 Ware, 384; The *Aquila*, 1 C. Rob. 82; The *Centurion*, 1 Ware, 477; The *Fortune*, 2 W. Rob. 92; *Rowe v. The Brig —*, 1 Mason, 372; The *Henry Ewbank*, 1 Sumn. 400; *Cross v. The Bellona*, Bee, 194; *McGinnis v. The Pontiac*, 5 McLean, 367; The *Britain*, 1 W. Rob. 50; *Clayton v. The Harmony*, 1 Pet. Adm. 79.

³ *Pratt v. Thomas*, 1 Ware, 432;

The *Jonge Bastiaan*, 5 C. Rob. 287.

⁴ The *Denia*, A. C., May 10, 1842, *Shipping Gazette*, *Young's Digest of Maritime Law Cases*, p. 119, No. 1804.

⁵ The *Firefly v. The Miaza*, July 4, 1856, *Shipping Gazette*, *Young's Digest of Maritime Law Cases*, p. 119, No. 1815.

⁶ *Brevoort v. The Fair American*, 1 Pet. Adm. 90; *Taylor v. The Cato*, 1 Pet. Adm. 48.

⁷ *Mason v. The Blaireau*, 2 Cranch, 240; The *Sarah*, 1 C. Rob. 313, n.; The *Hector*, 3 Hagg. Adm. 90; *Bell v. The Anne*, 2 Pet. Adm. 282.

⁸ The *Chas. Henry*, 1 Ben. 8.

Marine assistance by steam-vessel must be encouraged by a liberal compensation.¹

In *The Steamship Huntsville*, United States District Court, District of South Carolina, Magrath, J. (not reported), the court says: "The circumstance that the salvage service was in part rendered by a steam-vessel, and to a steam-vessel, has always been regarded as justifying a higher compensation than would be given to sailing-vessels."

Expenses and a reasonable compensation are decreed, although not a salvage service.²

Where salvors are very meritorious, and the value of the vessel and articles saved is very small, the court will exceed in its allowance the proportion usually given.³

A moiety has rarely been given, except in cases of derelict, and of some peculiar cases.⁴

Where the property is small, the salvors numerous, and the perils imminent, or the services laborious and exhausting, a larger allowance than a moiety is justified.⁵

Still two-thirds of the whole proceeds have been allowed.⁶

It is only where the owner abandons claim to the

¹ *The Camanche*, 8 Wall. 479; *The Delaware*, 6 Blatchf. 527; *The True Blue*, 4 Moore P. C. C. 96; *The Emulous*, 1 Sumn. 207; *Baker v. Hemenway*, 2 Low. 501.

² *The Happy Return*, 2 Hagg. Adm. 198; *The Traveller*, 3 Hagg. Adm. 370; *The James Watt*, 2 W. Rob. 270; *The Purissima Concepcion*, 3 W. Rob. 181; *The Favorite*, 2 C. Rob. 232; *The Louisa Jane*, 2 Low. 304.

³ *Smith v. The Stewart, Crabbe*, 222.

⁴ *Bearse v. Pigs of Copper*, 1 Story, 326; *The Aquila*, 1 C. Rob. 32; *The Jonge Bastiaan*, 5 C. Rob. 287.

⁵ *Sprague v. Barrels of Flour*, 197; *The William Hamilton*, 3 Hagg. Adm. 168; *The Reliance*, 2 Hagg. Adm. 90; *The Jonge Bastiaan*, 5 C. Rob. 287.

⁶ *The Jonge Bastiaan*, 5 C. Rob. 287; *The Jubilee*, 3 Hagg. Adm. 43, n.

proceeds that the court will award the whole to the salvor.¹

Cases have occurred where the whole property saved was given to the salvors, the value being small and the peril great.²

A low rate of salvage should be allowed where salvors in good weather simply towed a vessel disabled to a safe anchorage, incurring no risk of life or property, and no deviation from their ordinary pursuits.³

Anciently, it was a positive rule, in cases of derelict property, to allow one-half to the salvors.⁴

The rule bends to the reason and equity of particular cases.⁵

Though somewhat relaxed, the rule still continues to be favored.⁶

The rule of compensation is deemed flexible, yet a moiety is generally awarded.⁷

The growing preference is on a moiety in cases of absolute derelict,⁸ unless special circumstances should call for a discriminating valuation.⁹

The compensation, at a moiety, is not fixed, but an

¹ The *Carl Schurz*, 8 Cent. L. J. Blenden Hall, 1 Dods. 414; The *Elliotta*, 2 Dods. 75.

² The *Rob Roy*, *Calcutta Vice A. C.*, Shipping Gazette, Feb. 27, 1855. ³ The *Mary Ford*, 3 Dall. 188; The *Adventure*, 8 Cranch, 226; The *Elliotta*, 2 Dods. 75; *Cross v. The Bellona*, Bee, 193; *Flinn v. The Leander*, Bee, 260; *Bell v. The Ann*, 2 Pet. Adm. 279; either a moiety or two fifths, The *Aquila*, 1 Rob. 82; The *Jonge Bastiaan*, 5 C. Rob. 287; The *Lord Nelson*, Edw. Adm. 79; The *Maria*, Edw. Adm. 175.

⁴ The *Bolivar v. The Chalmette*, 1 Woods, 397, by Bradley, Ct. J. ⁵ The *Henry Ewbank*, 1 Sumn. 400; The *John Wurts*, Olcott, 473; *Bond v. The Cora*, 2 Wash. C. C. 80.

⁶ The *Charles Henry*, 1 Ben. 8; *Lewis v. The Elizabeth and Jane*, 1 Ware, 39; The *Aquila*, 1 C. Rob. 82. ⁷ The *John Wurts*, Olcott, 473; The *Waterloo*, Blatchf. & H. 114; The *Galaxy*, Blatchf. & H. 270.

⁸ The *Elizabeth and Jane*, 1 Ware, 39; *Rowe v. The Brig —*, 1 Mason, 372.

⁹ The *Henry Ewbank*, 1 Sumn. 410; *Rowe v. The Brig —*, 1 Mason, 372; The *Fortuna*, 4 C. Rob. 278; *L'Esperance*, 1 Dods. 46; The

adequate reward, according to the circumstances of the case.¹

But it is incumbent on the claimant to establish that a different measure should be allowed.²

One-third to three-fourths allowed.³

As a general rule, the rate of salvage of a vessel derelict at sea is a moiety of her value.⁴

One-third allowed in case of a *quasi* derelict.⁵

The ordinance of France gives in cases of gross derelict one-third of the gross value.⁶

It is with great reluctance that more than a moiety is awarded.⁷

Except in special cases, in which great hardships and dangers have been encountered, this is the extreme limit.⁸

Cases might occur of such extreme peril and difficulty, of such exalted nature and enterprise, that a moiety even of a very valuable property might be too small; and, on the other hand, where attended with so

¹ *Post v. Jones*, 19 How. 161; *The Thetis*, 2 Knapp, 390.

² *The Charles Henry*, 1 Ben. 11; *Rowe v. The Brig —*, 1 Mason, 372; *L'Esperance*, 1 Dods. 46.

³ *The John Wurts*, Olcott, 472; *The Jubilee*, 3 Hagg. Adm. 43, n.

⁴ *The John E. Clayton*, 4 Blatchf. 372; *Sprague v. Barrels of Flour*, 2 Story, 197; *The Fortuna*, 4 C. Rob. 278; *The Marquis of Huntly*, 3 Hagg. Adm. 246; *The Charlotta*, 2 Hagg. Adm. 361; *The Charles Henry*, 1 Ben. 8; *The Ida L. Howard*, 1 Low. 6; *Post v. Jones*, 19 How. 150; *The British Consul v. Smith*, Bee, 180; *Morehouse v. The Jefferson*, 1 Pet. Adm. 46, n; *Hendrey v. The Priscilla*, Bee, 1; *Rowe v. The Brig —*, 1 Mason, 372; *The Blenden Hall*, 1 Dods. 414.

⁵ *The George Nicholas*, Newb. 453. And see *Flinn v. The Leander*, Bee, 260; *Post v. Jones*, 19 How. 150; *The Anna*, 6 Ben. 170.

⁶ *Rowe v. The Brig —*, 1 Mason, 377; *Mason v. The Blaireau*, 2 Cranch, 240; *McDonough v. Danner*, 3 Dall. 188; *The Adventure*, 8 Cranch, 221.

⁷ *Sprague v. Barrels of Flour*, 2 Story, 198; *The Frances Mary*, 2 Hagg. Adm. 87; *The Effort*, 3 Hagg. Adm. 163; *The Britannia*, 3 Hagg. Adm. 153; *The Queen Mab*, 3 Hagg. Adm. 242; *The Ewell Grove*, 3 Hagg. Adm. 209; *Rowe v. The Brig —*, 1 Mason, 372.

⁸ *The John E. Clayton*, 4 Blatchf. 372.

little difficulty and peril, that it would entitle the parties to little more than a mere *quantum meruit*, for work and labor done.¹

In estimating the value of the services rendered by the salvors, the court looks to the exertions actually made, and the peril to which the property saved was subject. It will not take into consideration exertions that might have been required, or danger that might have subsequently arisen, if the salvage had been effected at a later period.

"Subsequent perils and storms," observes Mr. Justice Story, in the case of *The Emulous*, 1 Sumn. 216, "may enter as an ingredient into the case, when they were foreseen, to show the promptitude of the assistance and the activity and sound judgment with which the business was conducted; but they can scarcely avail for any other purpose. Ought the salvage to be diminished by a favorable state of the weather after the arrival in port? If not, why should it be increased by an unfavorable state of the weather?"²

In determining the amount to be paid salvors, the degree of peril to which they were exposed is to be taken into consideration.³

Where there is a joint salvage, a vessel saving life as well as property has been awarded a higher remuneration than one saving property only.⁴

Where the vessel saved is a steamboat carrying passengers, the reward is not to be estimated by the same

¹ *Spencer v. The Charles Avery*, 1 Bond, 122; *Rowe v. The Brig —*, 1 Mason, 372. (See further as to derelict, *post.*)

² See also *The Versailles*, 1 Curt. 360; *Talbot v. Seeman*, 1 Cranch, 1; *The Brig Alphonso*, 1 Curt. 360; *The Independence*, 2 Curt. 350.

³ *The Eastern Monarch*, Lush. 81; *The Thomas Felden*, 32 L. J. Adm. 61.

⁴ *The Clarisse*, Swa. 129. See also *The Coromandel*, Swa. 205; *The Bartley*, Swa. 198; *The Alma*, Lush. 378.

considerations of value as are applied to other vessels. Such vessels make large profits, and are not to pay for salvage services as if they were only carrying ballast.¹

As to suits for salvage services rendered to ships of war, see *The Prinz-Frederik*, 2 Dods. 451; *The Comus*, 2 Dods. 464; *The Exchange*, 7 Cranch, 116; *The Thomas A. Scott*, 10 L. T. N. s. 726.

Steamers, in consequence of the cost at which they are fitted up, the power which they possess of performing salvage services with much greater celerity than other vessels, and under circumstances in which no other assistance could prevail, and the greater safety to the salved vessel which attends their services, are generally entitled to greater salvage reward than other vessels.²

Formerly individuals effected salvage services. Now steam and associated powers of incorporation perform such services more easily, quickly, and safely; and sometimes they do what individual efforts would fail to accomplish, as in the case of the "Protector," owned by the New Harbor Protection Co. in the port of New Orleans; and in *The Camanche*, 8 Wall. 448. The public interests are promoted by the admiralty in fostering and encouraging steam corporated power, and capital and enterprise, by liberal rewards.

As Mr. Parsons, a very distinguished and learned writer, more than once tells us, steamboats should be encouraged.³

¹ *The Adrianople*, 3 Hagg. 151, 153; *The London Merchant*, 3 Hagg. 394, 400.

² *The Kingalock*, 1 Spinks, 263, 267; *The Alfen*, Swa. 189, 190; *The Raikes*, 1 Hagg. 240; *The London Merchant*, 3 Hagg. 394; *The Earl Grey*, 3 Hagg. 363; *The Perth*, 3 Hagg. 414; *The Shannon*, 11 Jur.

1045; *The Graces*, 2 W. Rob. 294; *Brooks Barden et als. v. The Ship William Penn*, 2 Hughes, 144, U. S. Circuit Ct., Dist. of S. C., 1853, Wayne, J.; *The Emulous*, 1 Sumn. 207; *The Camanche*, 8 Wall. 479; *The Delaware*, 6 Blatchf. 527; *Baker v. Hemenway*, 2 Low. 501.

³ 2 Pars. Sh. & Adm. 274-294.

Taney, Chief Justice, in the Circuit Court of Delaware, held that the owners of a steam-tug, on a dangerous station and at a heavy expense, kept for salvage and towage purposes, were entitled to the full remuneration usually awarded to salvors who peril life and property, though *the particular salvage services may not have been accompanied by such danger or peril.*¹

On the principles which induce courts of admiralty to award to salvage by steamships greater salvage compensation than to other vessels, the District and Circuit Courts of the United States for the District of Louisiana have decreed larger salvage rewards to the steam iron fire-boat "Protector."

This boat is owned by a corporation organized under the laws of Louisiana, and is employed solely for salvage purposes in the harbor of New Orleans.

It will suffice here to state that the "Protector," in addition to her extraordinary capacity to throw large quantities of steam and of water to extinguish fires, possesses a new appliance for forcing dry carbonic acid gas into a vessel's hold, and a strong solution of sulphuric acid, soda, and water, to extinguish fires on deck and in open places.

In the case No. 11,207 of the docket of the United States District Court for the District of Louisiana, The New Harbor Protection Company (owners of the "Protector") *v.* Ship Tornado and Cargo (not reported), Billings, J., said : —

It is but proper to remark, that the evidence in this case establishes the efficiency of the carbonic acid gas used by the libellants, the owners of the "Protector," in extinguishing fires on board vessels. The preponderance of evidence leads

¹ *Viridin v. The Caroline*, 6 Am. & Adm. 294, and in Abbott. See Law Reg. 222, cited in 2 Pars. Sh. also *The Blackwall*, 10 Wall. 13.

to the conclusion that the "Protector" would have extinguished the fire by the use of the gas alone, had its application not been suspended. It is also clear that the gas was effective in staying the progress of the fire, and that the water found a much larger portion of the cotton uninjured by fire than would have been the case had not the gas been used by the "Protector," and therefore it is entitled to compensation for salvage services, not only for pumping out, but for the use of the carbonic acid gas in retarding the progress of actual combustion.

And in the case No. 9082 of the docket of the United States Circuit Court for the District of Louisiana, *The Suliote* (Consolidated Cases, not reported), Bradley, J., said:—

In this distribution no special allowance will be made to the "Protector" for the cost of gas or materials, that being taken into consideration in awarding to her two-thirds of the balance. In making this award to the "Protector," we have had regard to the fact that the value of her aid in affording salvage service is greatly enhanced by her being fitted and furnished for performing this kind of work. Being always ready and at hand, and powerfully efficient for the accomplishment of her purpose, a fire happening to any vessel in the harbor is bereft of much of its terror, and the damage actually ensuing therefrom is in most cases, and probably was in this case, greatly lessened in extent.¹

Where the time occupied by a steamer in rendering salvage service is of limited duration, that circumstance of itself will not operate against the claim of the salvors.²

Adverting to the second ingredient laid down in *The Blackwall*, 10 Wall. 1, in determining the amount of sal-

¹ Since this was written, I have met a report of the case in the Federal Reporter, vol. v. p. 99, under the title of *Murphy and Others v. Ship Suliote*.

² *The Andalusia*, 12 L. T. N. S. 584; *Sonderburg v. The Tow Boat Co.*, 3 Woods, 146, by Bradley, J.

vage, namely, promptitude, skill, and energy, I remark that, in the case of *The Steamboat Bacon*, Newb. 274, the court said : —

When persons like the plaintiffs, by great ingenuity and skill, and at great expense, succeed in the construction of apparatus and machinery by which a boat can be raised in twelve hours, which could not be raised at all without their machinery and apparatus, why should the owners of property complain of the shortness of time employed? The sooner the property is raised out of the water the better for owners; long delay with many kinds of property would be utter destruction to that property.

And in the case of the *Rothsay Castle*, 2 Mar. Law Cases, on p. 207, the court says : —

The time occupied was short, but was effective. The court, in all such cases, will ever keep in view the fact that steam-power, the cause and forerunner of so many and important and beneficial changes in all things connected with its influences, has, in regard to salvage, effected two great boons in favor of navigation and the world of commerce; namely, the saving of human life and property, with *nearly entire immunity*, and with almost certain success.

The court, then, *estimating the services of the salvors in this case but as ordinary services in respect of personal risk or daring, or of labor*, and in regard of the object achieved, that it was achieved with skill, good conduct, and complete success; *keeping also before it the policy of encouraging, in such enterprises, the aid and co-operation of great steam-packet companies*, — will award to the petitioners one-fourth of the value of this vessel and her stores, being a sum of £375, with the costs of suit.

In the case of *The Northumberland*, 2 Mar. Law Cases, 215, it was held that,

Where salvage services are rendered by steamships, the amount of salvage which the court will award is not necessa-

rily affected by the fact of the services performed *occupying only a short time*; the court now holding that, with respect to steamships, it is *better that the service should occupy a short space of time*, than the length of time it used to occupy, *from the delay* which arose to enable sailing-ships to make manœuvres necessary to perform the service.

And in that case, on page 216, Dr. Lushington says :

Respecting the duration of the service, it was short, and did not exceed eight hours; but that is a question, where steam-vessels are employed, which the court does not consider operates against the claim for remuneration, because the court has held *that it is better that the service should occupy a short space of time*, than the length of time it used to occupy, *from the delay* which arose to make the manœuvres requisite to perform the service.

And in the case of *The Syrian*, 2 Mar. Law Cases, 387, it was held that in awarding the amount for salvage services, THE SHORTNESS OF THE DURATION OF SUCH SERVICES IS AN ELEMENT OF MERITORIOUSNESS.

On page 388, in that case, Dr. Lushington said : —

As to the period of time which the salvage services occupied, the court had often had occasion to observe that *the shorter the period occupied in rescuing a ship from distress, the more meritorious* was the service.

Where the salving vessel is a passenger ship, the court, in estimating the amount of salvage to be awarded, will take into consideration the nature of the vessel's employment.¹

The great responsibility which the master of such a vessel takes upon himself in delaying the prosecution of the voyage will also be taken into consideration.²

¹ *The Vanguard*, 5 Irish Jur. n. s. 864.

² *The Ella Constance*, 33 L. J. Adm. 189-192.

Where ships' boats or other property are employed in connection with the salvage service, the value of that property is to be taken into consideration in fixing the compensation of the salvors.¹

The fact that such property may be of trifling importance does not necessarily detract from the value of the salvage service, whilst the placing of valuable property in peril does undoubtedly enhance the merit.²

In cases where the salving vessel has sustained damage or loss in rendering salvage services, the court has frequently, in addition to the salvage, awarded a reasonable compensation for the damage, and for the loss of the ship's services whilst undergoing repairs.³

It is usual to allow the salving vessel any extra expenses incident to the salvage services which she may have incurred over and above her ordinary outlays.⁴

Where a vessel is injured or lost whilst engaged in the salvage service, the presumption is that the injury or loss was occasioned by the necessities of the service, and not by the default of the salvors; and in such a case the burden of proof lies upon the defendants, who allege that the loss was caused by the salvors' own acts.⁵

In *The Jane*, 2 Hagg. 388, a south-sea whaler which had been detained in consequence of salvage services rendered by her was decreed additional compensation to cover the risk, damage, and expense which she had incurred; and in *The Salacia*, 2 Hagg. 262, compensation

¹ *The Fusilier*, B. & L. 341.

² *Ibid.*

³ *The Spirit of the Age*, Swa. 286; *The George Dean*, Swa. 290;

The Saratoga, Lush. 318; *The Eleanore*, B. & L. 185; *The Martha*,

3 Hagg. 434. See also *The Cornelius Grinnell*, 11 L. T. N. S. 278.

⁴ *Sonderburg v. The Tow Boat Co.*, 3 Woods, 146.

⁵ *The Thomas Blyth*, Lush. 16.

was in the same way awarded to a vessel engaged in the sealing trade, for the loss of the sealing season.

In *The Howthandel*, 1 Spinks, 25, the loss of a quantity of ice with which the salving vessel was laden, was taken into consideration in awarding the salvage.

Where any payments have been made or are claimed by the ship-owner in respect of the damage or detention of the salving vessel, they should be stated in the libel, that they may, if reasonable, be allowed against the defendants, or the courts will not afterwards take the payments into account as against the other claimants in apportioning the salvage.¹

If a fishing-vessel should interrupt a lucrative employment for the purpose of rendering salvage service, that fact, and the loss she may have sustained, will form an essential ingredient in the estimate of the award.²

In ordinary cases, however, where there is no immediate danger, the court will lean against the claims of fishermen to be compensated to the full extent of their possible earnings.³

The damage must not be too remotely connected with the salvage.⁴

It was formerly laid down that in awarding salvage the court would not take into consideration any risk which the owner of the salving vessel underwent of having his policy of insurance vitiated in consequence of a deviation by her, but would consider every vessel uninsured.⁵

¹ *The Wigtonshire*, 36 L. J. Adm. 11.

² *The Louisa*, 3 W. Rob. 99.

³ *The Nicolai Heinrich*, 17 Jur. 320.

⁴ *The Cornelius Grinnell*, 11 L. T. N. S. 278. See also *The Mulgrave*, 2 Hagg. 77.

⁵ *The Deveron*, 1 W. Rob. 180.

See also *The Jane*, 2 Hagg. 338; *The Osbona*, 1 Spinks, 161; *The Beaver*, 3 C. Rob. 292; *Lawrence v. Sidebotham*, 6 East, 45; and *The Medora*, *The Jeannette*, and *The Arabian*, Pritch. Dig. 835.

In more recent cases, however, the court has not recognized this doctrine, but has taken into consideration risks of this nature as materially affecting the proportion of salvage to be awarded to the owner.¹

In a work quoted by me on the first page of this book, viz. Arnould on Marine Insurance, 3d edition, London, by David MacLachlan, M.A., the law as to the effect of a deviation is thus laid down on pages 479, 480:—

A doubt, dishonorable to the jurisprudence of Christian communities, appears for some time to have prevailed both in this country and the United States, whether a departure from the direct course of the voyage, for the purpose of saving the lives of men threatened with an imminent danger of shipwreck or foundering, was or was not a deviation which would discharge the underwriters; it must now, however, be taken as clear law, both on this and the other side of the Atlantic, that a deviation of this kind, sanctioned alike by the true interests of commerce and the clearest precepts of humanity, can in no instance be held to discharge the underwriters. In this country see the *dictum* of Lawrence, J., in *Lawrence v. Sidebotham*, 6 East, 54, and the judgments of Lord Stowell in *The Beaver*, 3 C. Rob. Adm. 292; and *The Jane*, 2 Hagg. Adm. 338—345. In the United States, see the cases collected in 1 Phillips Ins., No. 1027; 3 Kent's Comm. 313. See especially the judgment of Story, J., in *The Schooner Boston*, 1 Sumn. 328. This liberty, however, has been expressly confined, in the United States, to those cases only in which the object of the deviation is the preservation of human life; and it has been held not to extend to the case of saving property. See the cases referred to, 1 Phillips Ins., No. 1028. I apprehend the law will be found the same in this country.

It appears, however, to be doubtful whether the courts of England will recognize the distinction pointed

¹ The *Sir Ralph Abercrombie*, this case. See also *The Scindia*, L. R. 1 P. C. 454. See Dr. Lushington's remarks on page 461 of 13 W. Rep. 279.

out by Mr. MacLachlan. In a recent case (*The Thetis*, L. R. 2 Adm. 365), Sir Robert Phillimore is reported to observe:—

It has been urged upon me that the act of the master in this case could not have been within the scope of his commission, and was not for the benefit of the owners, because a deviation for the purpose of rendering salvage service to property would, upon general principles, avoid a policy of insurance; but that is an undecided and very doubtful proposition of English law, and certainly one to which I cannot give my assent. It was at all events pronounced by the Privy Council in 1866 to be an undecided point of law. *The True Blue*, L. R. 1 P. C. 254, 255. I am aware that the American courts appear to have made a distinction between a deviation for the purpose of saving life and for that of saving property; it is perhaps not quite so certain, however, as generally supposed, that such a distinction has been finally established.¹

If the object of the deviation be to save the life of man, the humanity of the motive and the morality of the act give it a strong claim to indulgence; but, after that object is effected, if the delay be continued or the risk increased by adding to the cargo or diminishing the crew, or by any other means, for the purpose of saving property, it is a deviation, and the insurers are discharged.²

A delay to save the crew of a wrecked and sinking ship, whose lives are in jeopardy, is not a deviation.³

A vessel was passing by Gibraltar when the captain's wife was on deck to look at the rock; turning to go

¹ See on the same subject *The Ewbank*, 1 Sumn. 400; *The Nathaniel Hooper*, 3 Sumn. 535, 578; *The Blaireau*, 2 Cranch, 240; *Williams v. A Box of Bullion*, 6 Am. Law Rep. 363.

² *Bond v. Brig Cora*, 2 Wash. C. C. 80.

³ *The Boston*, 1 Sumn. 328; *The Henry Ewbank*, 1 Sumn. 400.

down into the cabin, she missed her footing and fell a distance of six feet. She was in the third month of pregnancy. The vessel was brought to anchor, a boat sent ashore for a physician, and the vessel remained there eleven days. While she so remained, some little cargo was taken in. *Held*, where the object of the departure from the course is to carry relief to mariners or passengers destitute or suffering on board other vessels, it is justifiable; the rule is not confined to such cases, and it can make no difference whether the object of the departure is to alleviate the distress and administer to the necessities of persons lawfully on board, or strangers suffering from disasters sustained by the loss or wreck of another vessel; for the dictates of humanity are as forcible in the one as in the other case, and it would be strange if the law recognized any discrimination between them.¹

A departure from the due course of a voyage to save property merely is a deviation, and will forfeit the insurance; but a departure to save life is not.²

Where the ship saved is derelict, it has been the uniform course to give more than in ordinary salvage cases, but upon the same principle that is applied to other cases; namely, the dangerous condition of the property. Derelict, like other salvage cases, are to be governed by the value, risk of life, damage to the property, skill, labor, and duration of service.³

It was anciently the practice of the court to award to salvors a moiety of the property found derelict; but for a long time this practice has been departed from,

¹ Perkins v. Augusta Insurance and Banking Co., 10 Gray, 312. ² The True Blue, L. R. 1 P. C. 250, 256. See also The Sara Belle,

³ Peterson v. The Chandos, Dist. Ct. Oregon, 1880, Deady, D. J., 4 Fed. Rep. 645. 4 Notes of Cases, 144; The Florence, 16 Jur. 572, 578.

and the amount rests, as in other cases, in the discretion of the court, and does not necessarily bear any fixed proportion to the property salvaged, but is regulated on the principle of giving an adequate reward according to the circumstances of the case.

Sir C. Robinson said: "It is a suggestion of common reason that, where the property is very large, a smaller proportion may afford adequate remuneration; and as that is the only true measure of reward, it is absurd to assign fixed proportions, which must operate very differently according to difference of value."¹

In order to encourage salvors generally, a greater amount is given where the value of the property saved is large; because in many cases where it is small an adequate reward cannot be given.²

The court has, however, in cases of derelict, on many occasions given a proportion of one-half or one-third of the property salvaged to the salvors.³

Where the property was of small value, and no owner appeared, it has even directed that the whole sum at which it was sold should be divided among them.⁴

¹ The *Salacia*, 2 Hagg. 262. See also The *Aquila*, 1 C. Rob. 37; The *Florence*, *ubi supra*; The *Effort*, 3 Hagg. 165; The *Thetis*, 2 Knapp, 409; The *Minerva*, 1 Spinks, 271; The *Magdalen*, 5 L. T. N. s. 807; The *Berlin*, 4 Irish Jur. 11; The *Jane*, 5 Irish Jur. 31; The *Martin Luther*, 12 L. T. N. s. 585; The *Vesta*, 2 Hagg. 189; The *Oscar*, 2 Hagg. 260.

² The *Caspian*, Shipping Gazette, A. C., June 30, 1853; The *Persia*, A. C., Nov. 11, 1853, Shipping Gazette, Feb. 11, 1853. See 1 A. & E. R. 160; The *Highlander*, before Chief Justice Jervis, April 1, 1856, Shipping Gazette; The *Secret v. The Juniata*, A. C., Nov. 21, 1856; The *Linga*, Mitchell's Maritime Register, Jan. 25, 1852.

³ The *Cargo ex Venus*, L. R. 1 Adm. 50, 51; *L'Esperance*, 1 Dods. 46; The *Norma*, Lush. 124; The *Blenden Hall*, 1 Dods. 414-423; The *Frances Mary*, 2 Hagg. 39; The *Reliance*, 2 Hagg. 90, n.; The *Elliot*, 2 Dods. 75; The *Atlas*, Lush. 518, 530; The *Ewell Grove*, 3 Hagg. 209, 221; The *Sansome*, 3 Irish Jur. 58; The *Jubilee*, 3 Hagg. 43, n.; The *Jonge Bastiaan*, 5 C. Rob. 322; The *Fortuna*, 4 C. Rob. 193; The *Mary Anne* (Irish), 11 L. T. N. s. 85.

⁴ The *Castletown*, 5 Irish Jur.

Salvage on derelict property is not limited to a moiety, as high as seventy per cent being given in a case of extraordinary merit, where the labor is considerable and the value of the saved property small.¹

In the case of *Bark Cleone*, 6 Fed. Rep. 517 (1881), Hoffman, D. J., cited *Tyson v. Prior*, 1 Gall. 133; *The Aquila*, 1 C. Rob. 37-41; *The Bee*, 1 Ware, 336; *The Cosmopolitan*, 6 Notes of Cases, Supp. 17; *The Barefoot*, 1 Eng. L. & Eq. 661; *The India*, 1 W. Rob. 409; *The Lovett Peacock*, 1 Low. 143, and said, "To entitle a party to salvage, not only must the service rendered be meritorious, but the possession taken must be lawful;" and further quoted *Clarke v. The Brig Healey*, 4 Wash. 656.

By quitting the vessel, the master and owner does not lose his *jus disponendi* or right of property.

If a vessel be found, though with no one on board, under such circumstances that the persons assuming to be salvors knew, or ought to have known, that their services were not desired, and they take possession with intent to supplant the master and owners in giving her relief, they have no claim for compensation.²

There does not appear to be any instance, except in cases of derelict, where the salvors have been decreed a sum exceeding a moiety of the proceeds.³ Although

379. See *The Rutland*, 3 Irish Jur. Law Rev. vol. xvi. No. 8, August, 283; *The William Hamilton*, 3 Hagg. 1882.
168, n.

¹ Cargo from Wreck of *Bark Edwards*, 12 Fed. Rep. 509, July 11, 1882. See *The Hyderabad*, 11 Fed. Rep. 749 (with note, citing cases on Towage as Salvage Service, Derelict, and Possession by Salvors); s. c. *The Am.*

² *The Upnor*, 2 Hagg. 3; *The Barefoot*, *ubi supra*; *The India*, 1 W. Rob. 406; *The Amethyst*, Davis, 23. See argument of counsel (the late Mr. J. Curtis) in *The Island City*, 1 Black, 126; *The Champion*, Br. & Lush. Adm. 69.

³ *The Inca*, Swa. 370.

salvors are entitled to no specific proportions of the property saved,¹ and although the remuneration for the service is not measured by the value of the property, but with reference to all the circumstances of the case, and especially with reference to any risk there may have been to human life,² the value of the property, nevertheless, may materially affect the sum to be awarded.

The court will take into account the fact that the owners are benefited in proportion to the value of the property, and when it is large the remuneration is relatively great, not only in consequence of its being less felt by the owners, but because on many occasions, where the property is small, salvors perform great services without adequate remuneration.³

In ascertaining the value of the ship and cargo, the general rule is that the value shall be taken at the port into which the ship is carried. Where, however, salvage services were rendered to a vessel bound for London, and she was carried into Lisbon, and her cargo, which was unsalable there, was subsequently transhipped and sent to London, it was held that the proper method of arriving at the value of the cargo at Lisbon would be by putting it at a percentage less than the proceeds of its sale in London, and deducting the freight and charges for the voyage from Lisbon to London, but allowing a *pro rata* freight as far as London.⁴

¹ *The Thetis*, 3 Hagg. 14; *The Salacia*, 2 Hagg. 62. 3 Hagg. 90; *The Syrian*, 14 L. T. n. s. 833.

² *The James Dixon*, 2 L. T. n. s. 696; *The Thomas Fielden*, 32 L. J. Adm. 61.

³ *The Earl of Eglinton*, Swa. 7; *The Ewell Grove*, 3 Hagg. 209; *The Raikes*, 1 Hagg. 246; *The Hector*,

⁴ *The George Dean*, Swa. 290. See also *The Norma*, Lush. 124; *The Progress*, Edwards, 210; *The Cargo ex Loodianah*, 2 Pritch. Adm. Dig. 736.

The value of the property is also to be taken at the time when the vessel was first brought into safety, and not at any subsequent period; and where a vessel and cargo, although worth more than £1,000, when first carried into port, in consequence of mismanagement realized barely more than half that sum, the salvors were held to be entitled, in a question as to jurisdiction, to take the larger sum as the value.¹

A salvor must share in the depreciation of the saved property pending proceedings for adjudication of his claim; loss by sale at unfavorable time, &c.²

In estimating the salvage upon freight, where the services of the salvors terminate before the completion of the voyage, the court will treat the freight as divisible, and as though a *pro rata* freight were payable at the intermediate port.³

In ascertaining the net value of the property, all necessary sale expenses, and the usual allowances in respect of cargo and freight, and, as a general rule, expenses by which all parties interested in the cargo are benefited, are to be deducted from the gross value.⁴

On the other hand, the following will not be proper deductions: a bottomry bond executed, necessaries supplied, or wages due, before the salvage was rendered;⁵ money paid on account of freight,⁶ or for primage or insurance, or for the expenses of prosecuting persons who had forcibly dispossessed the salvor.⁷

¹ The Stella, L. R. 1 Adm. 340. Supp. 1, 111; The Sabina, 7 Jur.

² The Carl Schurz, 8 Cent. L. J. 182.

³ The Fleece, 3 W. Rob. 278,

⁴ The Norma, Lush. 124. 282; The Charlotte Wylie, 5 Notes

⁵ The Peace, Swa. 115; The of Cases, 4; The Westminster, 1 W.

Hebe, 7 Notes of Cases, Supp. 113; Rob. 229-233; The Norma, Lush.

⁶ The Paul, L. R. 1 Adm. 57; The 124; The Fusilier, 10 L. T. N. S.

Samuel, 15 Jur. 407. 699; The Peace, Swa. 115.

⁷ The Hebe, 7 Notes of Cases, ¹ The Fleece, *ubi supra*.

In the unreported case of *The Steamship Louisiana*, in the Eastern District of Louisiana, Woods, Circuit Justice, on the 16th of June, 1881, decreed that the owners of the barge "Tornado" should be paid an additional sum of \$445 for expenses incurred in rendering said salvage services.

Growing out of or incidental to the case of the *New Harbor Protection Company v. Ship Tornado*, Cargo and Freight, more fully stated in another part of this chapter, was the case of *W. H. Ellis et al. v. Cargo of the Ship Tornado* (unreported, and on appeal to the United States Supreme Court).

The libellant, William H. Ellis, was the master of the "Tornado," and the libellants, Robert A. Stewart and John Stewart, were her owners.

Libellants paid for the compressing of said cargo before it was put on board said ship, and for stowing the same on board and other expenses incident thereto, the sum of \$14,278.26.

The gross freight on said cargo, had it been delivered at its destination in Liverpool, as required by bills of lading, would have been £4,169 13s. 1d.

The cause came on to be heard in the Circuit Court of the United States for the District of Louisiana, on appeal from the decree of the District Court (Billings, J.)

In addition to the facts stated above, in this case and that of the *New Harbor Protection Company v. Ship Tornado*, Cargo and Freight, the following are necessary to a clear comprehension of the decree of the Circuit Court, Woods, Circuit Judge, rendered March 18, 1880.

On the 19th day of March, 1878, the underwriters filed their claim, claiming all of said cargo, and pro-

cured an order from the judge of the District Court to be entered on said claim suspending the right given to said W. H. Ellis, master as aforesaid, on the 6th of March, 1878, to bond such of the cotton as was stored in the Levee Cotton Press, to wit, about five hundred bales, until the further order of the court.

On March 26, 1878, the said master and claimant not having bonded said cotton, which by the order mentioned in the foregoing paragraph he was allowed to bond, a rule was taken and duly served on him to show cause why said order, so far as it allowed him to bond a portion of said cotton, should not be rescinded, and the movers of the rule, the insurers of said cargo, be allowed to bond the same; said rule was heard on the next day, March 27, by the District Court, the movers and the said master and claimant, William H. Ellis, being represented by their respective counsel, and was by the court made absolute without opposition, and the order allowing the said master and claimant to bond said portion of said cargo was rescinded, and the movers of the rule allowed to bond the same.

Five hundred and twenty-three bales of the cargo of said cotton, of which twenty-three arrived alongside of her in the forenoon of the day on which said fire was discovered, and one hundred and sixty-four of which were on the levee or wharf alongside of the ship, ready to be put on board when said fire was discovered, and of which three hundred and twenty-six had been removed from said ship by the salvors after said fire was discovered and before said ship sank, were in an undamaged and sound condition.

In consequence of said fire on said ship "Tornado," and as a result thereof, said ship was so badly damaged that the cost of her repair would exceed her value when

repaired, that she was unseaworthy and incapable of earning freight.

The five hundred and twenty-three bales of cotton, part of said cargo, which were undamaged and were bonded by the underwriters, were appraised at the sum of \$19,100, and the gross proceeds of the sale of the damaged cotton, part of said cargo, amounting to \$116,000.

Eleven hundred and eighty-five bales of the damaged cotton, part of said cargo, were shipped by the purchaser at the marshal's sale, coastwise, and to Philadelphia and other cities of the Northern States, in the condition it came from the ship.

Two thousand eight hundred and ninety-six bales of said damaged cotton were sent to the pickeries, picked, dried, and rebaled and shipped, — two thousand four hundred and forty-six of said bales to Liverpool, and four hundred and fifty to Philadelphia.

All the damaged cotton taken from said ship was unmerchantable cotton, even after it had been picked, dried, and rebaled; that is, it could not be used for making cotton cloth, but could only be used for making felt hats, paper, wadding, and such like articles, having lost by the submersion and drying a large part of its natural oil, its fibre being injured and its weight reduced.

As a conclusion of law from the facts found by the Circuit Court, Woods, Circuit Judge, the court was of opinion, and found, —

1. That the libellants have no lien for freight on said cargo of cotton, or the proceeds thereof, in the registry of the court, or for the said sum of money advanced and paid by them for compressing and stowing said cargo.

2. That the libel in this cause should be dismissed at libellants' costs.

A decree in conformity to the foregoing was signed on the 8th of March, 1880.

Where, however, a bottomry bond was given, and wages were earned subsequently to the salvage, they were both held to be proper deductions from the value of the property as against the salvors.¹

If the vessel and cargo be arrested, the salvors are entitled to have their value ascertained by appraisement, unless the value is agreed upon by all parties in interest.

Where the amount of a stipulation by the claimants of vessel and cargo for their release is consented to, the value may be proven, as any other fact in the case.

Where the appraisement has been made, the court will not afterwards disturb it.²

An appraisement in an admiralty case, made under the order of the court and regularly returned and filed, is the best evidence of the value of the matter in dispute, and cannot be overcome by affidavits.³

It is perfectly competent for salvors, instead of leaving the amount of their remuneration to be determined by the court, to agree with the master of the vessel in distress to render the required assistance for a specified sum; and in such a case they will be bound by their contract, and can claim no more than the stipulated amount.⁴ So, if dependent on success.⁵

¹ The *Selina*, 2 Notes of Cases, 18.

⁴ The *True Blue*, 2 W. Rob.

² The *Cargo ex Venus*, L. R. 1 176.
Adm. 50. See also *The R. M. Mills*,
3 L. T. R. s. 518.

³ *United States v. The Union*, 4
Cranch, 216.

⁵ The *Silver Spray's Boilers*,
Brown, 349. But see the *Marquette*,
Brown, 364.

To render such an agreement binding, however, it is necessary that it should be clear and explicit in its terms.¹ It need not be in writing.²

But whilst a *viva voce* agreement, if sufficiently proved, is binding, the court will be unwilling to act upon it, unless it consist of more than loose conversations.³

It must depend upon something more than the recollection of what occurred in the course of such conversation.⁴

The agreement must also state the sum agreed to be paid.⁵

In fixing the sum, the salvors are entitled to look only at the extent of danger to which the property is exposed, the degree of labor they will have to undergo, the length of time they may be occupied, and the risk to which they may be exposed. They have no right to speculate as to the value of the cargo; and even if it be falsely represented by the master as being of much less value than it actually is, the agreement will nevertheless be upheld.⁶

With regard to the condition of the vessel, although the master, before entering into the agreement, is not obliged to point out every circumstance that has occurred during the voyage,⁷ there should be no concealment, as the suppression of any facts which might affect the service, and therefore have operated upon the agreement at first, may vitiate it.⁸

¹ The Graces, 2 W. Rob. 294; The William Lushington, 7 Notes of Cases, 361.

² The Firefly, Swa. 240.

³ The Salacia, 2 Hagg. 262-265.

⁴ The Jane Anderson, 8 Irish Jur. 293; The Briton, 5 Irish Jur. 170.

⁵ The William Lushington, 7 Notes of Cases, 361.

⁶ The Henry, 15 Jur. 183, 184.

⁷ The Jonge Andries, Swa. 226, 227.

⁸ The Kingalock, 1 Spinks, 263-265; The Briton, 5 Irish Jur. 170; The Canova, L. R. 1 Adm. 56.

The master of the vessel in distress is authorized to bind the owner by a salvage agreement,¹ unless, indeed, the owner be at hand at the time, and give him no authority.²

But if the agreement be tainted with fraud, the court will refuse to recognize it as against the owner, and has, in more than one instance, set such agreement aside.³

The court will not suffer the ignorance of a foreign ship-master to be taken advantage of in the way of extorting extravagant remuneration from him for assistance rendered.⁴

Contracts as to the *quantum* of compensation for salvage services are binding, provided they are reasonable and without fraud or mistake.

Such contracts, when made with the master of a salvage vessel, bind the vessel but not the crew, unless made with their consent.⁵

In view of the absence of immediate necessity for the agreement for assistance, of the exaggeration of the claim, of the antedating of the written agreement, and of consent between libellant and master to throw the whole expense on the cargo, the demand was held to be forfeited as respects the cargo, and the libel was dismissed.⁶

The master and owner of a salving vessel have gen-

¹ The Africa, 1 Spinks, 299; The Arthur, 6 L. T. N. S. 556.

² The Elise, Swa. 436. (In this case Dr Lushington doubted whether, under such circumstances, the master had authority to compromise a salvage claim.)

³ The Generous, 2 L. R. Adm. 57; The Crus V., Lush. 583. See The Repulse, 2 W. Rob. 396; Hous-

man v. Schooner North Carolina, 15 Pet. 40.

⁴ The Phoenix v. The — Viking, A. C., Dec. 19, 1856, Shipping Gazette.

⁵ The Delambre, 9 Fed. Rep. 775.

⁶ Lowe v. The Titus, The Reporter, vol. xiii. p. 328 (Boston, 1882).

eral charge of the claim for salvage, and such claim made by them is to be considered as comprehending the claim for the services of the crew.¹

The court will also refuse to recognize an agreement where the master improperly or recklessly contracts to pay the salvors an exorbitant demand.²

Where a contract made by the master of the salvaged vessel and the agent of the salvors is deemed iniquitous by the court, it will not be enforced.

This was so held in the case of *The Tornado*, in the United States Circuit Court, District of Louisiana (unreported) by Woods, Judge, in a decree rendered May 24, 1880.

The cause came on to be heard upon the interventions of the tow-boats "Norman," "Rio Grande," and "Harry Wright," and upon the pleadings, evidence, reports, exceptions, proceedings, and decrees of the District Court, and the new evidence offered in the Circuit Court, and was argued by counsel.

On consideration whereof the court found the following facts:—

The ship "Tornado" was an English vessel of 1,720 tons burthen, and had come to the port of New Orleans for a cargo of cotton, which she had shipped and stowed away to the amount of 5,195 bales, together with a considerable quantity of staves.

She was almost ready for sea, and was lying alongside of the wharf in the third district of the city of New Orleans, at the foot of Marigny Street, when, on Sunday, the 24th of February, 1878, at six o'clock A. M., smoke was found coming out of the main hatch,

¹ *W. W. Averill et al. v. E. A. of Louisiana*, April Term, 1881 (unreported).
² *The Theodore*, Swa. 351.

and a number of the crew were at once sent to the nearest fire-alarm box, and the fire department of the city of New Orleans were quickly on the spot. The main hatch having been opened, the fire-engines immediately commenced to throw water down the main hatch, which they continued to do until nine o'clock A. M., when the main hatch was closed, and the steam gas-boat "Protector," being provided with apparatus for the manufacture of carbonic acid gas, commenced to attempt to extinguish the fire, which at that time was raging quite violently in the hold, by attempting to fill the vessel with carbonic acid gas. This continued until nine o'clock P. M., when the main hatch was opened, and it was found that there was less smoke than there had been before the experiment with the gas had commenced. The engineer of the "Protector" went down the main hatch, and having hooked on to some bales of the cotton, they were hoisted up and landed on the levee, greatly charred. In the mean time, the fire-engines were pumping in water through the hatch-hole, and the smoke was increasing. A hole was then cut in the deck abreast the main rigging on the starboard side, and some fourteen bales of cotton were got out of this hole. At six o'clock P. M. smoke was greatly increasing, and the hatches were again put on, and the hole in the deck covered, and the "Protector" again commenced pouring carbonic acid gas into the hold of the vessel, and continued doing so during the night.

While these things were going on, the harbor tug-boats, the "Continental," the "N. M. Jones," the "Belle Darlington," the "Fern," the "Aspinwall," the "Charlie Wood," the "Ida," the "Ella Wood No. 2," the "Joseph Cooper, Jr.," and the "Wasp" had all got there, hear-

ing that the vessel was in peril, and were, with the fire department, engaged in pouring water, with their more or less powerful pumps, upon the fire, at all times when the gas experiments were not going on. Arriving at the scene of the disaster, some earlier than others, they were all there during the whole of the first day.

On Monday, the 25th of February, at six o'clock in the morning, the main hatch was opened, and the hole that had been made in the deck was uncovered, and the smoke was found to be greatly increased; some thirty-two bales of cotton were at this time taken out by the stevedores. The fire department were hard at work pumping in water, and several holes were cut in the decks, trying to get at the seat of the fire. The main pumps were taken up, to allow the hose suction to be put down, and the "Protector" and the steam-engines were pumping out the water part of the day; but the smoke kept on increasing. At six o'clock P. M. there were twelve feet six inches of water in the hold, and the draft of water aft, twenty-three feet eight inches, and forward, twenty-five feet six inches. At half-past eleven P. M. the smoke was still increasing and appearing, and the crew were employed in landing the sails and new ropes, sizing stuff, and all that could be got at, on the wharf.

At this time the main store-room was so densely filled with smoke that it was impossible to get in there, and the crew were at this business until five o'clock in the morning. At midnight of same day, a stevedore and his men came on board, shifted the chain cables and tore up the decks and carlings in order to get at the cargo, took out and saved as many bales as possible, all at the orders of the master, during all of this day; also, the various tug-

boats that we have named were employed in pumping water on the fire in the hold of the "Tornado."

On Tuesday, 26th of February, 1878, at six o'clock A. M., Canby, the regular stevedore of the vessel, and his men came on board and landed the boats and water-casks on the wharf, tore up the forward deck and carlings, and commenced to save cargo. By noon the stevedore Drysdale had 181 bales landed, and Mr. Canby 100. The fire department were pouring in water during the night and all the forenoon, and still the smoke increased, and by noon the men were forced to come up from the hold, and the fire brigade were set to work to fill the ship with water; it having been determined by the captain that the only chance of saving any part of the ship and cargo was to fill her with water and sink her, it being deemed impossible to stop the fire otherwise; and about seven o'clock P. M. of Tuesday, February 26, the ship sank, the water being two or three feet above the main deck.

On February 27, Ellis, the master, and Schultze, the agent, of the "Tornado," made a contract with the Tow-boat Association, to which the "Norman," "Rio Grande," and "Harry Wright" belonged, to pump out the "Tornado" for a compensation of fifty dollars per hour for each boat, to be continued until the boats were discharged.

After the making of said contract, and while the "Tornado" still lay upon the bottom of the river, the "Protector" filed a libel for salvage against the "Tornado" and cargo, and, by virtue of a warrant issued on said libel, the United States marshal seized the said ship "Tornado" and cargo when the said tow-boats were about to begin pumping her out.

After the seizure, the marshal took possession of the

"Tornado," and displaced the authority of the master, but permitted the said tow-boats to proceed and pump out the "Tornado."

The tow-boats "Norman," "Harry Wright," and "Rio Grande" commenced pumping out the "Tornado" early in the evening of Feb. 27, 1878, assisted by other tugs and the fire department of the city of New Orleans, and succeeded, with said assistance, at twelve o'clock M. of February 28, in raising the "Tornado," and placing her in a position of safety. The efficient work of pumping out the "Tornado" was done between six A. M. and twelve M. of February 28.

The said pumping service was done without serious danger to the tow-boats by which it was rendered. The total valuation of the property saved was \$140,090.75.

The value of the tow-boats "Harry Wright," "Norman," and "Rio Grande," in the aggregate, was \$75,000, and their daily expenses were each \$100, when actually at work.

The usual charge made by tugs in the port of New Orleans was from \$6 to \$12 per hour for pumping.

The said tow-boats remained alongside the "Tornado" after she was raised, ready to render her assistance in case it was needed, for the period of about twelve days; but such assistance was unnecessary, and not required by any peril of the "Tornado" and cargo.

The three tow-boats of the appellants, at the time of making the contract, were out of service, laid up on the other side of the river, without crews or provisions, but were immediately manned and victualled, and brought over, and laid alongside of the "Tornado" in the afternoon of Wednesday, the 27th of February, 1878.

At that time there were no other tow-boats alongside of the "Tornado."

The said tow-boats were provided with machinery and pumps for extinguishing fires and pumping out sunken ships.

As conclusions of law from the facts, the Circuit Court found, —

1. That said contract made by Ellis, master, and Schultze, agent, of the "Tornado," with the Tow-boat Association for pumping out the "Tornado," was inequitable, and ought not, under the facts of the case, to be enforced.

2. That the service rendered by the said tow-boats "Harry Wright," "Norman," and "Rio Grande" was a salvage service, but one of low grade.

3. That each of said tug-boats should be allowed the sum of \$1,000.

It was accordingly so decreed; and it was further adjudged that the costs of the appeal be paid out of the fund in the registry of the court.

In this connection it may be stated that the claims of these appellants, under the contracts made by the master of the "Tornado," which were afterward revived by the marshal and carried out, were as follows: —

For the services of the "Rio Grande" from six P. M., February 27, to four A. M., March 12, — 298 hours, — \$14,900.

For the services of the "Norman," from six P. M., February 27, to eight A. M., March 11, 1878, — 278 hours, — \$13,900.

For the services of the "Harry Wright," from ten P. M., February 27, to six A. M., March 9, — 224 hours, — \$11,200.

The bills, made out accordingly, were approved by Ellis, the master, and by Schultze & Co., her agents.

The judgment of the court below awarded to the gas-boat "Protector" \$7,500, divided as follows:—

For expenses incurred in making gas to pump into the "Tornado," \$2,404.57; and of the balance, three-fourths, equalling \$3,821.58, to the owners of the gas-boat, and one-fourth thereof, equalling \$1,275.85, to the crew. The "Norman," "Rio Grande," and "Harry Wright" were each allowed \$1,000,—one half to the owners, and the other half to the crew. Various smaller sums were awarded to other tow-boats and parties.

The court of admiralty will also refuse its sanction to agreements for the salvage of the ship irrespective of the cargo on board; and upon such an agreement being proved it will refuse to pronounce any salvage whatever to be due.¹

"A contract made by the master with salvors for the recovery of the cargo of a sunken vessel, sustained."
"Parties may agree upon the amount of a salvage compensation, or on the principles upon which it shall be adjusted; and such agreements, if fairly made, and no advantage be taken of ignorance or distress, are readily upheld by the courts."

Harley v. Four Hundred and Sixty-seven Bars of Railroad Iron, 1 Sawyer, p. 1, and cases there cited on p. 2; The Helen and George, Swa. 368; The Firefly, Swa. 240; Collins v. Fort Wayne, 1 Bond, 476; The Henry, 2 Eng. L. & Eq. 564. See Central Law Journal, vol. viii. p. 390; Housman v. Schooner North Carolina, 15 Pet. 40.

"It is well settled that courts of admiralty will not

¹ The Westminster, 1 W. Rob. 229, 235.

allow a salvor to take advantage of his situation, and to avail himself of the calamities of others to drive a bargain; but yet they will enforce a contract made for salvage services and salvage compensation, where the salvor has not taken advantage of his power to make an unreasonable bargain."

Bark J. G. Paint and Cargo, 1 Ben. 545-550; *The Waverley*, L. R. 3 Adm. & Ecc. 369.

If, on the other hand, the agreement should be unjust or inequitable towards the salvors, the court will refuse to recognize it.¹

Where the owners of a vessel to which valuable services had been rendered whilst she was in a position of considerable danger alleged that the salvors had agreed to do the work for 8s. 6d., the court, regarding this amount as futile, gave the salvors £10 and costs;² although the master of the salving vessel has authority to bind his owner by a salvage agreement.³

As far as the other salvors are concerned, the agreement only binds such of them as are parties to it. Thus, where an agreement was made by the master of a salving vessel with the owner of the vessel salvaged as to the *quantum* of salvage to be paid, it was held to be binding on the master and his employers, but not upon the crew, it having been made without their sanction or concurrence.⁴

¹ *The Phantom*, L. R. 1 Adm. 15; *The British Empire*, 6 Jur. 608; 58. See also *The William and John*, The *Firefly*, Swa. 240; *The Helen* 9 Jur. n. s. 284. And see *The Kingalock*, 1 Spinks, 263-265, and *The Medina*, 19 Eng. Rep. 545 (1876). ² *The Africa*, 1 Spinks, 209, 300.

³ *The Phantom*, *ubi supra*. See ⁴ *The Britain*, 1 W. Rob. 40. *The True Blue*, 2 W. Rob. 176; See *The Sarah Jane*, 2 W. Rob. *The Enchantress*, 30 L. J. Adm. 110.

On the same principle, an agreement with part of a crew of a salving ship has been held to be not binding upon the others not concurring in it.¹

Where an understanding was come to between the owner of a vessel salvaged and the owner of a cutter engaged by them to render the service, and no specified sum was named in it, it was held not to bar the proceedings of the master and crew of the cutter, who acted under the personal direction of the owner of the cutter, but were not parties to or cognizant of the understanding.²

If a salvage agreement be proved, the court will uphold it, unless it be clearly inequitable; and it is no answer to the agreement to say that the bargain is a hard one upon the salvors.³

It is no answer to say that greater difficulties than were anticipated, in consequence of the change of weather, attended its performance.⁴

Nor is it any answer to say that the weather became tempestuous, or the vessel was longer in arriving in port than might have reasonably been expected.⁵

Nor, on the other hand, can the owner of the vessel receiving assistance refuse to pay the amount stipulated for, on the ground that the salvage services were attended with less difficulty than had been anticipated, unless, indeed, the sum happen to be so grossly exorbitant as to amount to evidence of bad faith or fraud,

¹ *The Sansome*, 3 Irish Jur. 258; *The Charlotte*, 3 W. Rob. 68-74.

² *The William Lushington*, 7 Notes of Cases, 381. See also *The Elise*, Swa. 436.

³ *The Firefly*, Swa. 240. See also *The Helen and George*, Swa. 368.

⁴ *The True Blue*, 2 W. Rob. 176, 180.

⁵ *The True Blue*, 2 W. Rob. 176, 180. See also *The Jonge Andries*, Swa. 226; *The Cato*, 35 L. J. N. S. 556; *The Nuova Loanese*, 17 Jur. 263; *The Resultatet*, 17 Jur. 353.

which of themselves would induce the court to set aside the agreement.¹

The burden of proof of the agreement is on the party setting it up; but when once it is proved, the *onus* is shifted upon those who dispute its validity.²

If a salvage agreement has been abandoned by the mutual consent of the parties or abandoned by the party setting it up, or if it be so founded in fraud or misrepresentation that the court would hold it to be void, it will afford no answer on the part of owners to a suit for salvage, or on the part of salvors to a defence of tender.³

The party alleging the cancellation of the agreement is bound to prove the fact by a clear preponderance of testimony.⁴

Where the salvors make separate claims against the ship and cargo, an agreement out of court between them and the owners of the ship, fixing the amount of remuneration, is not conclusive on the court in awarding the amount due from the owners of the cargo.⁵

Where the owners of the vessel salvaged set up an agreement in bar of a salvage claim, they must pay into court the sum stipulated for in the agreement.⁶

Customs and usages of the sea authorize the master to employ his vessel and crew in a salvage service in rescuing property from destruction.⁷

¹ The *Helen and George*, Swa. 397; The *Betsey*, 2 W. Rob. 167-368.

² The *Helen and George*, Swa. 368-370; The *Resultatet*, 17 Jur. 353; The *Nuova Loanese*, 17 Jur. 263; The *Arthur*, 6 L. T. N. S. 556; The *Theodore*, Swa. 351; The *Graces*, 2 W. Rob. 294.

³ The *Samuel*, 15 Jur. 407; The *Africa*, 1 Spinks, 299.

⁴ The *Repulse*, 2 W. Rob. 396,

397; The *Betsey*, 2 W. Rob. 167-172; The *Samuel*, 15 Jur. 407; The *Africa*, 1 Spinks, 299; The *Crus V.*, Lush. 583; The *Theodore*, Swa. 351.

⁵ The *Emma*, 8 Jur. 657.

⁶ The *Catherine*, 6 Notes of Cases, Supp. xliii-lii.

⁷ *Roff v. Wass*, 2 Sawyer, 395; The *Boston*, 1 Sumn. 328; The *Centurion*, 1 Ware, 483.

Parties may agree on the amount of compensation, or on the principles on which it shall be adjusted; and such agreements, if fairly made, and no advantage be taken of ignorance or distress, are upheld.¹ But inequitable agreements will not be enforced.²

Where neither fraud nor oppression is shown, though it be contingent, and be for a sum much less than the court would have awarded, an agreement will be upheld.³ And this, although it may prove hard on the salvors.⁴

Where the rate in a contract is exorbitant, the contract will not be upheld.⁵

An agreement may be made by the master of a vessel in distress, provided there is a clear understanding of the nature of the agreement, made with fairness and impartiality to all concerned;⁶ as for the recovery of the cargo of a sunken ship,⁷ or to labor for the rescue of the ship from an impending peril,⁸ or for service.⁹

¹ *Harley v. Bars of Railroad Iron*, 1 Sawyer, 2; *The Emulous*, 1 Sumn. 207; *The Independence*, 2 Curt. 350; *Bearse v. Pigs of Copper*, 1 Story, 314; *The A. D. Patchin*, 1 Blatchf. 414; *The True Blue*, 4 Moore P. C. C. 96; *The Henry*, 2 Eng. L. & Eq. 564.

² *The Wexford*, 8 Ben. 119.

³ *Harley v. Bars of Railroad Iron*, 1 Sawyer, 1; *Bowley v. Goddard*, 1 Low. 157; *The True Blue*, 4 Moore P. C. C. 96; s. c. 2 W. Rob. 176; *The Catherine*, 6 Notes of Cases, 113; *The Mulgrave*, 2 Hagg. Adm. 78; *Bondies v. Sheerwood*, 22 How. 214; *The British Empire*, 6 Jur. 608; *The A. D. Patchin*, 1 Blatchf. 414; *The Helen and George*, Swa. 368; *The Enchantress*, 1 Lush. 93; *Eads v. The H. D. Bacon*, Newb. 274.

⁴ *The Silver Spray's Boilers*, 1 Brown Adm. 349.

⁵ *Tons of Coal*, 7 Ben. 343.

⁶ *Collins v. The Fort Wayne*, 1 Bond, 482; *The True Blue*, 4 Moore P. C. C. 96; s. c. 2 W. Rob. 176; *The Lady Flora Hastings*, 3 W. Rob. 120.

⁷ *Harley v. Bars of Railroad Iron*, 1 Sawyer, 1; *The Reward*, 1 W. Rob. 174; *The Princess Alice*, 3 W. Rob. 138; *The Emulous*, 1 Sumn. 207; *The Centurion*, 1 Ware, 477.

⁸ *The Williams*, 1 Brown Adm. 216; *The A. D. Patchin*, 1 Blatchf. 414. And see *The Independence*, 2 Curt. 350.

⁹ *The Betsey*, 7 Jur. 755; *The Emulous*, 1 Sumn. 210.

An agreement will not be enforced where the salvor has taken advantage of his power to make an unreasonable bargain.¹

A contract for salvage made by a master, the sunken boat being within easy reach of all parties interested, must be closely scrutinized.²

The true rule of construing salvage contracts is, that they shall be presumed *prima facie* to be fair; but if proven to be unconscionable, the court would refuse to enforce them.³

Salvage contracts must not only be fairly and honestly made, but the evidence must show a definite and explicit bargain.⁴

The contract is enforceable as it stands, when it is free from all fraud, deception, mistake, or circumstances of controlling necessity; and any claim for salvage will be denied.⁵

If there is a hiring or bargain, without fraud or mistake, the terms of such agreement are adhered to as the rule of computation; but if no agreement is made, remuneration is awarded with regard to considerations appropriately governing salvage cases.⁶

¹ *Post v. Jones*, 19 How. 160; *Brown Adm.* 355; *The Whitaker*, 1 *The Emulous*, 1 Sumn. 210; *The Silver Spray's Boilers*, 1 *Brown Adm.* 354; *The John G. Paint*, 1 Ben. 550; *The A. D. Patchin*, 1 Blatchf. 414.

² *Tons of Coal*, 7 Ben. 343.

³ *The H. D. Bacon*, Newb. 279. But see *The Emulous*, 1 Sumn. 207; *Bearse v. Pigs of Copper*, 1 Story, 314; *Schultz v. The Nancy*, Bee, 139.

⁴ *Bowley v. Goddard*, 1 Low. 157; *The Salacia*, 2 Hagg. Adm. 262.

⁵ *The Silver Spray's Boilers*, 1

Brown Adm. 355; *The Whitaker*, 1 Sprague, 229; *The True Blue*, 4 Moore P. C. C. 90; s. c. 2 W. Rob. 176; *The Henry*, 2 Eng. L. & Eq. 564; *The Phantom*, L. R. 1 Adm. 58; *The Salacia*, 2 Hagg. Adm. 262; *The A. D. Patchin*, 1 Blatchf. 414; *Bearse v. Pigs of Copper*, 1 Story, 314; *The Marquette*, 1 *Brown Adm.* 369; *Squire v. Tons of Iron*, 2 Ben. 21; *The Independence*, 2 Curt. 350.

⁶ *The H. B. Foster*, Abb. Adm. 229; *The Britain*, 1 W. Rob. 50; *The Betsey*, 2 W. Rob. 167; *The True Blue*, 4 Moore P. C. C. 96;

An agreement for specific compensation does not alter the nature of the service, but furnishes a rule of compensation, especially where the compensation depends on success.¹

It is none the less a maritime contract, because the compensation did not depend on the result.²

A contract for a mere attempt is inconsistent with a salvage service.³

Where there is a contract on certain stipulations, the party contracting cannot abandon it and claim salvage.⁴

Where services are performed in pursuance of an express contract, no action *in rem* can be maintained therefor.⁵

Nothing short of a contract to pay a given sum for the services to be rendered, or a binding engagement to pay at all events, whether successful or unsuccessful, will operate as a bar to a meritorious claim for salvage.⁶

The Mulgrave, 2 Hagg. Adm. 78;
The Traveller, 3 Hagg. Adm. 370;
The Zephyr, 2 Hagg. Adm. 43.

¹ The Silver Spray's Boilers, 1 Brown Adm. 354; The Marquette, 1 Brown Adm. 371; The William Lushington, 7 Notes of Cases. 361; The Catherine, 6 Notes of Cases, 43; The A. D. Patchin, 1 Blatchf. 229; The Independence, 2 Curt. 350; The Whitaker, 1 Sprague, 229; Williams v. The Jenny Lind, Newb. 443; The Camanche, 3 Wall. 477; The Emulous, 1 Sumn. 207; Collins v. The Fort Wayne, 1 Bond, 481.

² The Circassian, 2 Ben. 172; The A. D. Patchin, 1 Blatchf. 414; The Susan, 1 Sprague, 504; The Versailles, 1 Curt. 353.

³ The Mulgrave, 2 Hagg. Adm. 78; The Louisa Jane, 2 Low. 297.

⁴ Bondies v. Sheerwood, 22 How. 216; The Mulgrave, 2 Hagg. Adm. 78; Harley v. Bars of R. R. Iron, 1 Sawyer, 1; Collins v. The Fort Wayne, 1 Bond, 481.

⁵ The A. D. Patchin, 1 Blatchf. 421; Bearse v. Pigs of Copper, 1 Story, 314.

⁶ Collins v. The Fort Wayne, 1 Bond, 481; The Independence, 2 Curt. 350; The Camanche, 3 Wall. 477; Adams v. The Island City, 1 Cliff. 216; The H. B. Foster, Abb. Adm. 222; The Versailles, 1 Curt. 353; The Centurion, 1 Ware, 477; The William Lushington, 7 Notes of Cases, 361; Cromwell v. The Island City, 1 Cliff. 223; The Mul-

The evidence must show a definite and explicit bargain.¹

The presumption is that the services were rendered for a salvage compensation; but this may be rebutted by evidence.²

On a conflict of positive statements, and under the surrounding circumstances, an agreement for a stipulated price was held to have been made.³

Where a salvage agreement is that a vessel shall be paid a designated price "for every bale which should be recovered by her and brought to Mobile," a reasonable interpretation includes the delivery or tender of the cotton to the other contracting party. It is not sufficient that the vessel held the cotton under her salvage lien until taken by third parties under legal proceedings.⁴

The following interesting decision, bearing upon salvage contracts, was rendered by Judge Pardee, of the United States Circuit Court, Nov. 25, 1881:—

W. S. Lombard v. Steamship Delambre and Cargo. In admiralty, on appeal. The services rendered by the various tug-boats and vessels, and their officers and crews, in and of the "Delambre," were undoubtedly salvage services. So far as they were rendered under specific contracts, those contracts should be the guide in fixing the compensation for such salvage services; provided they are reasonable, and without fraud or mistake, and bearing in mind that contracts only bind parties and privies.

grave, 2 Hagg. Adm. 78; Coffin v. The John Shaw, 1 Cliff. 236; The White Star, Law Rep. 1 Adm. & E. 68; The Susan, 1 Sprague, 449; The Phantom, Law Rep. 1 Adm. & E. 58; The Saratoga, 1 Lush. 318; The Louisa Jane, 2 Low. 303; The Whitaker, 1 Sprague, 229; The Independence, 2 Curt. 350.

¹ Bowley v. Goddard, 1 Low. 157; The Salacia, 2 Hagg. Adm. 262.

² Bowley v. Goddard, 1 Low. 157; The Versailles, 1 Curt. 353.

³ Dominy v. The Anchors, 1 Ben. 77.

⁴ Morgan v. United States, 14 Ct. of Claims, 442.

A contract as to the *quantum* of salvage made with the master of a salvage vessel will bind the vessel, but not the rest of the crew, if made without their sanction and concurrence. 1 W. Rob. 40; 2 W. Rob. 110, 115; and this rule is regarded in this case.

If the owner desires to set up a contract in defence, he does so with a tender.¹

On payment of the money into court, the decree goes for him.²

Salvage may be barred by contract.³

On the loss of an injured vessel, the master is the joint agent of owner and insurer, and of all concerned, and is bound to make the best contract he can for salvage; and the insurers and owners are bound by whatever contract he makes.⁴

The amount of salvage reward formerly awarded was larger than that at present decreed. The tendency of the courts is now to decree less compensation. The human mind is like a pendulum, vacillating from one side to the other. In the older cases the salvage may have been too liberal; now, in my humble judgment, some of the more recent cases err the other way.

In the case of *The Circassia v. The City of Richmond*, Mitchell's Maritime Register, Feb. 27, 1880, p. 271 (London), Sir R. J. Phillimore said:—

This is a case of salvage, in which the most remarkable circumstance is the immense value of the property saved,

¹ *The Louisa Jane*, 1 Low. 300; *The True Blue*, 4 Moore P. C. C. 90; *The Jonge Andries*, Swa. 226-303; *The Henry*, 2 Eng. L. & Eq. 564; *The Crus V.*, Lush. 583; *The William Lushington*, 7 Notes of Cases, 361; *Dominy v. The Anchors*, 1 Ben. 77.

² *The Louisa Jane*, 2 Low. 300; *The Mulgrave*, 2 Hagg. Adm. 78; *The Catherine*, 6 Notes of Cases, Supp. 43.

³ *Bowley v. Goddard*, 1 Low. 157.

⁴ *Emerigon*, tome ii. ch. 17, § 7. And see 2 Arnould on Insurance, 8d ed. (London, 1866), p. 728.

which amounts to more than half a million of money. Of course that circumstance can in no way affect the principles on which the court has always proceeded in awarding salvage remuneration. It is a circumstance to be taken into consideration, but is not to be allowed to weigh upon the court as to the proper proportion of salvage to be awarded. The "Circassia" was asked to tow the "City of Richmond" to New York, which her master declined to do, for good reasons; but he offered to tow her to Halifax, only two hundred and forty miles off, and that offer was accepted, and it seems that he performed this service skilfully and effectually. There is considerable merit to be awarded to the captains of both ships for the manner in which the ropes were got on board, and the towage service put in order. The statement in the thirteenth paragraph is, that "By the services aforesaid the 'City of Richmond,' her cargo and freight, and the lives of her crew and passengers, were saved." That is, in our opinion, an extravagant statement; but no doubt she was in a position of considerable risk at the time when the "Circassia" came up to her. She had drifted, during the time between the breaking of the screw shaft and the coming up of the "Circassia," some sixty-nine miles to leeward, and the elder brethren point out to me that there was little chance of her having got to New York with whatever canvas might have been employed on her, considering the state of the weather at that time of the year. She might have got back to England, but it would have been at a considerable loss of time and expenditure of money. The service was, therefore, on looking to all the circumstances, a very valuable service. Nor is it to be left out of consideration that both vessels had a great number of passengers on board, which increased the responsibility of their captains. The case has been very fairly stated on both sides, and there has been no attempt made to deny the main facts of the case, or to diminish the merit of the service. It lasted in point of time about fifty-four hours; it began on the 21st, at 3.30 in the morning, and the vessel came to anchor at Halifax at 9.40 on the morning of the 24th. The question is, what amount of reward the court

ought, having regard to all the circumstances, to apportion. I have not been sorry to have had the advice of the elder brethren on this subject, and I shall, bearing in mind all the principles on which the court acts in these cases, and considering that the value of the property was more than half a million, award the sum of £7,000 to the salvors.

In the unreported case of *The Steamship Louisiana*, No. 9156 of the docket of the Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana, the District Court awarded six per cent salvage. On appeal to the Circuit Court, Woods, Circuit Justice, on the 16th of June, 1881, found, as a conclusion of fact, that the services rendered by the steam-tugs, barges, and dredge-boat, and their officers and crews, were salvage services; but that, in performing them, said officers and crews were not exposed to personal danger.

And, as a conclusion of law, the court found that there should be a decree in favor of the libellants and intervenors against said steamship "*Louisiana*" for four and a half per cent of the value of said steamship and her salved cargo; to wit, four and a half per cent on \$700,000, amounting to \$31,500.

In the case of *The Truro*, United States District Court for the District of South Carolina, heard by Magrath, J. (manuscript, not reported), that learned judge said:—

"Every regard is had for the labors and dangers of the salvors.

"If the recompense is excessive or the service over-rated, the ship-owner would find in the salvage a misfortune only in degree less than that with which he was threatened."

Salvage on the Florida Coast. — From a pamphlet published in New York, in the year 1861, I extract the

following, being from a decision by Judge Marvin, of the District Court of the United States, Southern District of Florida, Key West. This decision is not contained in Judge Marvin's admirable treatise on the law of Wreck and Salvage, which was published in 1858.

My object in making this extract is to illustrate that the amount of salvage varies with the circumstances, and means or instruments; also to show the usual rates of salvage decreed by Judge Marvin. The case was that of *James Pent et al. v. Ship Ocean Belle and Cargo*. On page 4 of the pamphlet the report reads:—

What would be no more than reasonable on this coast, where so many shipwrecks occur, and where the assistance of so few transient or trading vessels can be had to save the property, and where, consequently, the employment of a number of regular wrecking-vessels has been found necessary for that purpose, might be unreasonably large in the neighborhood of commercial ports, on the coast of England or the United States, or in any place where regular wrecking-vessels were unnecessary, because wrecks were fewer, and the assistance of transient persons or vessels could be more easily obtained.

On page 6 *et seq.* of that pamphlet we find the following observations, which are not contained in Judge Marvin's treatise:—

We will now advert to a number of cases, by way of showing what have been the usual rates of salvage decreed by this court. We shall select the cases indifferently from the two classes of cases, first, from that where the vessel was saved, and second, where it was lost.

The ship "Courier," laden with three thousand and twenty-four bales of cotton, got ashore on Carysfort reef, and lay in an exposed situation. The master carried out his own anchors, after which the weather became bad and the crew insubordinate. Six wrecking-vessels, carrying sixty-two

men, carried out another anchor, lightened the ship of nine hundred bales, and heaved the ship off. They were employed several days in performing the service, the weather being too bad to work. The ship and cargo were valued at \$140,000, and \$19,000 were decreed for salvage.

The case of the ship "Ocean Star" was decided in 1860. This ship, laden with two thousand five hundred and ninety bales of cotton, went ashore on the outer side of Brewster reef, — a dangerous reef situated near Cape Florida. Four wrecking-vessels and a number of fishing-boats, possessing an aggregate tonnage of four hundred and one tons, and carrying sixty-seven men, carried out three anchors and lightened the ship of five hundred and eighty-three bales. The master left the ship as soon as the first wrecking-vessel was loaded (very improperly as the court thought), to go to Key West, to make arrangements with his consignee. The ship was in a very dangerous situation, demanding the utmost care and skill to extricate her. The wreckers exercised both, and saved the ship and cargo. She leaked badly, requiring constant pumping on her way to this port. The ship and cargo were valued at \$106,000. Salvage, \$16,500. Seamen's shares, \$95.

The schooner "Maria Pike," laden with cotton and molasses, ran ashore on North Key Flats, one of the Tortugas shoals. Three smacks, carrying twenty men, went to her assistance. They found the master employed in staving his deck load of molasses to lighten the vessel. She was lying easy, but surrounded with intricate and extensive shoals. On the arrival of the smacks, the master ceased the business of staving the casks of molasses, and the next morning forty barrels of molasses were put on board one of the smacks, and sail being made, she went off the reef into deep water by an inner channel, known to the salvors, but unknown to the master. Considerable skill and good judgment were displayed by the salvors in managing the sails to get the vessel clear of the shoals, and in subsequently piloting the vessel through the channel out to sea. The master could have got the vessel afloat by throwing overboard the forty barrels of molasses,

but he could not have got her out of her difficulties without a pilot. The court said: "The chief value of the services consisted in the piloting, which very likely was the means of saving the vessel and cargo." The value of vessel and cargo was estimated at \$32,000. The salvage was \$3,200. Shares, \$65.

The bark "Laura Russ" was stranded on Alligator reef in 1860, laden with an assorted cargo. Two wrecking-vessels and several boats, carrying in all twenty-eight men, carried out two anchors and partly loaded one of the vessels. They then heaved her off, warped her some distance into deep water, and brought her to this port. Value, \$24,000. Salvage, \$3,000.

In the following cases the vessels were lost:—

The ship "Eliza Mallory" was wrecked in 1860, on the coast north of Cape Florida, laden with four thousand nine hundred and twenty-three bales of cotton, weighing one hundred and eighty pounds each. Twelve wrecking-vessels were employed various and different lengths of time—some one week, some five—in saving the cargo. The water in the ship came up about two feet over the lower deck, so that all the cotton saved from the lower hold was saved by diving; but the diving was attended with less difficulty than is usual in cases where the bales are larger. The whole cargo saved was valued at \$56,445. The total salvage allowed was \$16,241. The rates of salvage were one-fifth on the dry, one-third on that partly wet, and two-fifths on that saved by diving; one-third was allowed on the stores and materials. The shares varied from \$21 to \$77.

The British ship "Yucatan" was lost near Cape Florida, laden with an assorted cargo. Nine large wrecking-vessels were employed to save the cargo. Forty-three per cent was allowed for salvage, which made the average shares \$62.

The ship "Brewster" was lost near Cape Florida, laden with cotton. The cargo was saved by twelve vessels, carrying one hundred and thirty-three men. The salvage was one-third. Shares, \$50.

Where the value of the cargo and materials saved has been comparatively small, and more than one or two wreck-

ing-vessels have been employed, the court has been in the habit of allowing forty-five and fifty per cent for salvage, in order to compensate for the labor: as, in the case of the ship "Nathan Hanau," where the value saved was \$4,554.39, forty-five per cent was allowed; and in the bark "Thales," where the value was \$2,105, one-half was allowed.

The most usual rate of salvage, in this court, for saving cotton where the ship was lost has been twenty-five per cent on the dry, forty per cent on the wet, saved without actual diving, but taken out from under the water, and fifty per cent, and, in some few instances, fifty-five and sixty per cent, for saving it by diving in the lower hold; as, in the cases of the "Mulgrave," the "Indian Hunter," the "Mary Coe," the "Cerro Gordo" and others.

Less is allowed on Western rivers than on the high seas, because the peril of life is less.¹

In the case of *The Miranda*, 4 Mar. Law Cases, 440, 3 Law Rep. Adm. & Ecc. 561 (1872), she became disabled at sea by an accident to her machinery, and was towed into port by the "Roxana," a vessel belonging to the same owners. The "Roxana" was occupied in towing the "Miranda" from about half-past six P. M. on the 13th of October to half-past eight A. M. on the 17th. The owners of the "Roxana" claimed salvage on the cargo of the "Miranda." The weather was fine, and the service performed without danger. The value of the "Miranda" was £15,000; freight in course of being earned, £1,875; cargo, £15,000.

On that value Sir Robert Phillimore decreed to the owners of the "Roxana" £350, to be paid out of the proceeds of the cargo. And he said: "Remembering that the ship was the principal agent in rendering the salvage service, I shall award to the master and crew £120,

¹ *Mattingly v. Three Hundred and* Circuit, Tennessee, 1878, 8 Cent. Fifty-seven Bales of Cotton, Sixth Law Jour. 227.

to be paid out of the proceeds of the ship, freight and cargo." The judge was asked to apportion the sum of £120, and he apportioned it as follows: £70 to the master, and the residue to the crew according to their rating.

In the case of *The P. M. S. Co. v. Ten Bales of Cotton*, 3 Sawyer, 187 (1879), \$16,000 was awarded as salvage compensation where both vessels belonged to the same owner.

The suit was brought against a portion of the cargo of the "Colima" for a salvage compensation, with the understanding that the court should determine the whole amount of salvage, if any, to be paid by the cargo. Both vessels, the "Arizona" and the "Colima," belonged to the same owner, the Pacific Mail Steamship Company.

The total contributory value was \$1,200,000.

The "Colima" broke three blades of her propeller, was detained on her voyage two and a half to three days. The "Arizona" towed her about seven hundred and thirty miles. The service seems to have been somewhat severe and straining upon the "Arizona." She sustained, however, no serious injury. Sixteen thousand dollars were awarded to be paid by the owners of the cargo laden on board the "Colima."

The proctor who desires to read further than is contained in this book as to the amount of salvage awards may read, as I have, a statement of values, amounts of awards, and statement of circumstances, in six hundred and fifty-seven cases, in "A Digest of Maritime Cases from 1837 to 1860," by A. Young, London, 1865.

Many of these cases have been cited by me.

SECTION V. — APPORTIONMENT AND DELAY.

As a general rule, it is much better for all parties that the apportionment of salvage among the salvors

should be made by the court, rather than by the parties themselves.¹

Owners of salving vessels, in making distribution of salvage between themselves and the officers and crew of the vessels, should do so with great caution, and after the fullest explanation of all the facts to the parties interested.²

If done otherwise, the court will set the distribution aside.³

No action lies at common law for apportionment of salvage; and where salvage had been paid to the master of a vessel that had rendered salvage services, and one of the seamen sued the master in a court of common law for his proportion as money received to his use, it was held that the action was not maintainable.⁴

The apportionment of the salvage rests entirely in the discretion of the court, and no precise rule can be laid down as to the proportions which the court will allot; and in ordinary cases the officers, seamen, and apprentices composing the crew of the salving vessel participate in proportion to their wages. This has been the practice of the United States District Court for the District of Louisiana, and it is generally referred to a commissioner of the court to report upon the proportion to which each is entitled of the amount awarded to the whole of them, according to their wages on the shipping articles.

This report is subjected to exceptions or opposition, and the court confirms, rejects, remands, or modifies the report, as to it seems meet and proper.

The rule that, in ordinary cases, seamen and apprentices composing the crew of the salving vessel

¹ *Sonderburg v. The Tow Boat Company*, 3 Woods, 143.

² *Ibid.*

³ *Ibid.*

⁴ *Atkinson v. Woodhall*, 1 H. & C. 170.

participate in proportion to their wages, prevails in England.¹

If, however, any of the salvors have incurred greater risk or rendered greater services than the others, a larger share will be given.

Thus, in the case of *The Suliote* (unreported), Justice Bradley, in the United States Circuit Court for Louisiana, awarded, out of the salvage decreed, to the officers and crew of one of the salving vessels, the "*Maud Wilmot*," two months' wages; to another, the "*Belle Darlington*," three months' wages; and to the third, the "*Protector*," four months' wages.²

The practice is the same in England, — to give larger share to any of the salvors who have incurred greater risk or rendered greater services than the others.³

The master of the salving ship, upon whom rests the whole responsibility of employing the ship in the service, generally receives a larger proportion of the salvage than any of the crew.⁴ And such is the practice in the Louisiana district.

There being as to this, also, no fixed rule, reference to the scale of distribution in some of the more modern cases, in which a large proportion has been awarded to the master, may be found useful.⁵

¹ *The Pride of Canada*, Br. & Lush. 208. See also *The Louisa*, 2 W. Rob. 22; *The Martha*, 3 Hagg. 434; *The Albion*, 3 Hagg. 254; *The Earl Grey*, 3 Hagg. 363; *The Columbia*, 3 Hagg. 428; *The Hope*, 3 Hagg. 423; *The Jane*, 5 Irish Jur. 31; *The Caroline*, 7 Jur. 660; *The George Dean*, Swa. 290; *The Two Friends*, 2 W. Rob. 349; *The Columbine*, 2 W. Rob. 183.

² *The Henry Ewbank*, 1 Sumn. 400; *La Belle Creole*, 1 Pet. 31; *The Cato*, 1 Pet. 48.

³ *The Saint Nicholas*, Lush. 29. See also *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454; *The Nicolina*, 2 W. Rob. 175; *The Golondrina*, L. R. 1 Adm. 334.

⁴ *The Martin Luther*, Swa. 287. See also *The Enchantress*, Lush. 93; *The Earl Grey*, 3 Hagg. 363.

⁵ *The Martin Luther*, Swa. 287. See also *The Enchantress*, Lush. 93; *The Earl Grey*, 3 Hagg. 363; *The Himalaya*, Swa. 575; *The Howard*, 3 Hagg. 256, n.; *The True Blue*, L. R. 1 P. C. 250; *The Ragastha*,

In the above-cited case of *The True Blue*, L. R. 1 P. C. 250, out of a total salvage of £1,500, £1,000 of which was given to the owners of the salving vessel, the salvage having been in reality chiefly performed by her, £200 was given to the master, and £300 among the crew.

Upon the same principle, where a pilot, assisted by boatmen, rendered salvage service to a ship in distress, the court awarded him twice as much as each of the boatmen received.¹

The mate has also been frequently awarded a larger proportion, where his duties have been rendered more onerous in consequence of the salvage service.²

Where the mate chiefly contributes to the success of the service, the share allotted to him may be as large as, or even larger than, that of the master.³

In the case of *The Suliote*, herein previously cited (unreported), in the United States District Court for the District of Louisiana, Michael Higgins, one of the intervening libellants, claimed reward in the nature of salvage for services rendered as diver. It was urged, in denial of his claim, that his services were rendered under a contract made with the master of the "*Protector*" for his services for the sum of twenty-five dollars. The testimony tended to show that the cotton in the hold of the ship was still afire when Higgins went down into the hold and broke out the cotton,

Swa. 171; *The Paris*, 1 Spinks, 289. See also *The Albion*, 3 Hagg. 254; *The Defiance*, 3 Hagg. 256.

¹ *The Nicholas Witzten*, 3 Hagg. 369.

² *The Sir Ralph Abercrombie*, L. R. 1 P. C. 454, 462.

³ *The Nicolina*, 2 W. Rob. 175; *The Golondrina*, L. R. 1 Adm. 334.

See also, for examples of apportionment among salvors, *The Pride of Canada*, B. & L. 208; *The Saint Nicholas*, Lush. 29; *The Two Tees*, Lush. 505; *The Perla*, Swa. 230; *The Spirit of the Age*, Swa. 286; *The Himalaya*, Swa. 515; *The Britain*, 1 W. Rob. 45.

and that several of the bales sent up by him were still burning.

Mr. Justice Bradley said: "We concur with the District Court in awarding to Higgins the sum of \$500."

A master of a vessel is authorized in going to the rescue of a wrecked vessel, and all who are ready and willing to engage in the service are entitled to share in the reward.¹

All who materially contribute to the saving are entitled to share.²

The cargo, freight, &c., saved, constitute one fund or subject of salvage.³

The reward for enterprise, personal skill, risk, &c., can be awarded only to the individuals by whom the service is performed.⁴

A passenger who assisted in saving the property is entitled to a portion of the salvage.⁵

Passengers who are bold to undertake a salvage service upon a derelict, and active to assist, are entitled to an increased share; but those who refuse to assist when solicited are not entitled to share in the award.⁶

If apprentices are sailors, they are entitled to their shares;⁷ and the master cannot claim their shares.⁸

The shipper of the cargo is not entitled to salvage earned in the voyage, unless the stoppage and deviation were authorized by him.⁹

¹ *The Centurion*, 1 Ware, 477; *The Baltimore*, 2 Dods. 132.

² *The Blackwall*, 10 Wall. 1.

³ *The Ottawa*, 1 Low. 274.

⁴ *Union Towboat Co. v. The Delphos*, Newb. 412.

⁵ *Bond v. The Cora*, 2 Wash. C. C. 80; 2 Pet. Adm. 361.

⁶ *The Charles Henry*, 1 Ben. 8; *The Baltimore*, 2 Dods. 132.

⁷ *Mason v. The Blaireau*, 2 Cranch, 240.

⁸ *Waterbury v. Myrick, Blatchf. & H.* 43.

⁹ *The Nathaniel Hooper*, 3 Sumn. 581; 2 Law Rep. 165; *Bond v. The Cora*, 2 Wash. C. C. 80; 2 Pet. Adm. 361; *Taylor v. The Cato*, 1 Pet. Adm. 48.

Where the master and owners of a tug presented their bill in the name of the tug and her owner for salvage, it must be construed as covering the services of the crew, who, together with the vessel and its machinery, constituted the efficient agency that performed the salvage service.¹

And the receipt of the salvage by them renders them accountable to the crew for their share of the same.²

When the benefit received will warrant it, the salvor will be entitled to share to a greater or less degree in the benefit.³

Equal shares will be given to the master and pilot of a sailing-vessel.⁴

When two vessels come up together to render assistance, all persons composing the crews are entitled to share.⁵

Simply lying by, or consorting with another ship, if by contract, will sustain the claim.⁶

In the case of several salvors, all are entitled to share in the reward.⁷

The division should be in proportion to the merits of each,⁸ the share depending largely on the nature of the effort,⁹ and when the benefit received will warrant it.¹⁰

¹ Roff v. Wass, 2 Sawyer, 538.

² Roff v. Wass, 2 Sawyer, 538; Studley v. Baker, 2 Low. 205.

³ The W. F. Garrison, 1 Low. 139.

⁴ Brooks v. The William Penn, 2 Hughes, 145.

⁵ The Mountaineer, 2 W. Rob. 7.

⁶ The Williams, Brown Adm. 226; The Underwriter, 4 Blatchf. 94.

⁷ The Blackwall, 10 Wall. 12;

The Pride of Canada, Blatchf. & H.

208; The Bentley, Swa. 198; Norris v. The Island City, 1 Cliff.

219.

⁸ The Henry Ewbank, 1 Sumn. 421; The Jonge Bastiaan, 5 C. Rob. 287.

⁹ The Albion Lincoln, 1 Low. 76; The Santipore, 1 Spinks, 231.

¹⁰ The Genessee, 12 Jur. 401; The Atlas, 1 Lush. 518; The E. U.,

1 Spinks, 63.

The distribution made by award of parties appointed by the court is conclusive.¹

Cases may arise in which officers and crews of naval vessels may be entitled to salvage; but something more than the usual peril should be encountered, and for extraordinary exertions.²

As to distribution to vessels in the navy, see U. S. Rev. Stat. §§ 4642, 4652.

They will be entitled to salvage, but to a less amount than to private persons.³

But where the delay caused is slight, and no unusual hardship or peril is encountered, they are not entitled to salvage.⁴

It will be seen in another chapter that the compensation claimed for a salvage service may be diminished or entirely forfeited by the misconduct of the salvors; and there seems to be no reason why the same rule should not apply to the case of an individual salvor who has been guilty of any act calling for such punishment. This course has been followed in the United States.

In *The Waterloo*, Blatchf. & Howl. 114, the court reduced the master's share to that of a common seaman; and in *The Blaireau*, 2 Cranch, 240, the share of the master was held to be entirely forfeited on the ground of embezzlement, and the share of the mate reduced to that of a common seaman.

General misconduct will not, however, affect the right

¹ *The Henry Ewbank*, 1 Sumn. 428; *McDonough v. Dannery*, 3 Dall. 188.

² *The Josephine*, 2 Blatchf. 328; *The Gage*, 6 C. Rob. 273; *The Lord Nelson*, Edw. Adm. 79; *The Pensamiento Feliz*, Edw. Adm. 115; *United States v. The Amistad*, 15 Pet. 518; *The Thetis*, 3 Hagg. Adm. 14; *The Helena*, 3 Hagg. Adm. 430; *The*

Lustre, 3 Hagg. Adm. 154; *Le Tigre*, 3 Wash. C. C. 567; *The Mary Ann*, 1 Hagg. Adm. 158; *The Wave*, Blatchf. & H. 243.

³ *The Mulhouse*, 12 Law Rep. n. s. 276, quoted in the *Shipping Gazette*, April 25, 1860, from the *New Orleans Price Current* of March 28, 1860.

⁴ *The Josephine*, 2 Blatchf. 328.

of a seaman to his proportion of salvage. The misconduct charged against him must have been in connection with the salvage service itself.¹

If the crew of another vessel be on board the salving vessel, as passengers, at the time of the salvage, and assist in the service, they will be entitled to be remunerated. In one instance, the court allotted to passenger-seamen a much smaller sum than it did to the regular crew of the salving vessel.²

In a more recent case, the court directed that four foreign seamen and their captain, who were on board the salving vessel as passengers, and assisted in the salvage, should share equally with the able-bodied seamen, their captain receiving a double share.³

The court of admiralty has, from time immemorial, held all the persons composing the crew of the salving vessel, if ready and willing to join in the enterprise, entitled to share in the salvage awarded, even although a part of the crew only were engaged in the service. In the distribution of the amount, however, it has repeatedly made a distinction in favor of those who have actually incurred the difficulty and peril of the enterprise.⁴

And if part of the crew of a vessel be placed on board a ship in distress, whose crew has been reduced by death or sickness, those who remain on board the salving ship are entitled to a share of any salvage remuneration awarded.⁵

¹ *The Centurion*, Ware, 490. See *Notes of Cases*, 4; *The Jane*, 2 Hagg. 338; *The Centurion*, Ware, 400.

² *The Salacia*, 2 Hagg. 262-271. ⁴ *The Sarah Jane*, 2 W. Rob.

³ *The Perla*, Swa. 230-232. See 110-115.

also *The Hope*, 3 Hagg. 423; *The Salacia*, 2 Hagg. 262; *The Brig Cora*, 2 Wash. 80; *The Blaireau*, 2 Cranch, 240; *The Mountaineer*, 2 Cranch, 7; *The Charlotte Wylie*, 5 ⁵ *The Roe*, Swa. 84. See also *The Janet Mitchell*, Swa. 111; *The Nicolina*, 2 W. Rob. 175; *The Baltimore*, 2 Dods. 132; *The Sansome*, 3 Irish Jur. 258.

In the unreported case of *The Steamship Louisiana*, in the Eastern District of Louisiana, on the 16th of June, 1881, Woods, Circuit Justice, decreed that those members of the crew of the "Bailey" who were ready and willing to go with her to the rescue of the "Louisiana," but were detained by no fault of theirs, should share as other members of the crew in the award.

The right of the portion of crew remaining on board the salving vessel to participate in the salvage is, however, confined to those who are willing to assist; and if any of them refuse their help, they will be excluded from any share.¹

In the unreported case of *The Louisiana*, in the Eastern District of Louisiana, 16 June, 1881, Woods, Circuit Justice, found as a conclusion of fact that the services rendered by the steam-tugs, barges, and dredge-boats, and their officers and crew, were salvage services; but that, in performing them, said officers and crew were not exposed to personal danger. The amount of the decree was \$31,500, to be distributed as follows:—

To the owners of the barge "Margery C."	\$300
To fifteen men composing her crew, \$40 each	600
To the owners of the barge "Tornado"	300
For their expenses	445
To two men, her crew, \$40 each	80
To the owners and crews of the seven tugs, two-thirds of \$29,775, say \$19,850, five-sixths thereof going to the owners, and one-sixth to the crew, of each tug.	
The balance remaining, \$9,925, was awarded to the owners and crew of the steam-dredge "Bailey," nine-tenths thereof, say \$8,932.50, to the owners, and one-tenth, say \$992.50, to her crew.	

¹ The *Baltimore*, 2 Dods. 182.

Each case of salvage must stand on its own merits, with regard to the rate of distribution between owners and crew; but regard should be paid to the value and time of service of each.¹

In a suit instituted to recover salvage reward in respect of services rendered in towing a disabled vessel into safety, the court awarded a total sum of £4,000, of which £3,000 was apportioned to the owners.²

Modern text-writers, without an exception, uphold the right of the owners of ships and vessels, whether propelled by steam or otherwise, to claim salvage compensation when such services are rendered by their vessels, whether they are present or absent at the time the service is performed; and the author of the latest work published upon the subject states that one-tenth of all the salvage awards collated in the digest of the decisions in admiralty by the English courts are to owners and vessels, boats, tugs, and steamers. Assuming his estimate to be correct, it appears that thirty-five cases collated in that work recognize owners as salvors, and twenty-five the vessels themselves as entitled to such compensation.³

In the case of *James Boyle et al. v. The Steamship Teutonia* (unreported), No. 9056 of the docket of the United States Circuit Court for the District of Louisiana, June 16, 1881, Woods, Circuit Justice, decreed that the crew should recover each one month's wages.

The importance of encouraging the employment of steam-vessels in salvage enterprises has led to a modification of the old rule apportioning one-third to the

¹ *The Key West*, 11 Fed. Rep. 911, Nov. 25, 1881.

² *The Kenmure Castle*. *The Law Reporter*, Part 5, May 1, 1882, Probate Division, p. 47 (London).

³ *The Camanche*, 8 Wall. 473; *Robert's Adm.* 103; 2 Pritch. Dig. 727-909; 2 Parsons on Shipping, 277, 278; *The Blairean*. 2 Cranch, 269; *The Ewbank*, 1 Sumn. 426.

owner and two-thirds to the crew. The owner of a steamer fitted for and employed in salving vessels may well be allowed a larger share than one-third. In this case three-fifths of the award was decreed to the owners, and two-fifths among master, officers, and crew.¹

The rule for the apportionment of salvage adopted in the Circuit Court, as announced in *Sonderburg v. Tow Boat Company*, 3 Woods, 146, to give one half to the salving vessel, and the other half to her officers and crew, in proportion to their rates of wages, was recognized and followed in *W. W. Averill et al. v. E. A. Yorke et als.*, by Pardee, J., United States Circuit Court, Louisiana District, April Term, 1881 (unreported).

In the case of *The Bowen*, 5 Ben. 296, Judge Blatchford awarded \$3,000 for salvage, of which he gave to the owners \$1,600, to the master \$450, \$650 to the first mate, — who took charge of the vessel after the master was killed in an affray on board, the second mate so hurt as to be incapable of doing duty, and the first mate seriously hurt, — and the remaining \$300 was paid to the crew, according to their wages. In that case the only contest was as to the amount to be awarded, the owners being willing to make ample compensation for the services rendered; and the court cites approvingly the case of *Williamson v. The Alphonso*, 1 Curt. 376; *The Czarina*, 2 Sprague, 48, where \$5,485 was awarded, of which the owners received \$3,500, the master \$800, the first mate, who had taken charge of the vessel, \$1,000, the second mate \$25, and sixteen sailors \$10 each; *The Roe*, Swa. 184, where £150 was awarded, of which the owners received £60, the master £25, and the re-

¹ *The C. W. King*, 2 Hughes, 99. See also *Brooks v. The William Penn*, 2 Hughes, 144.

mainder was divided among twenty-seven seamen, in proportion to their wages; *The Janet Mitchell*, *Bridges*, 111; and *The Golendrina*, 1 *Adm. & Ecc.* 334, where £1,800 was awarded, of which the owners received £1,000, the second mate £300, the master £200, and the crew £300, according to their rating.

In the case of *The Brig Anna*, 6 *Ben.* 166, Judge Benedict awarded \$6,000 as a salvage, and deducted \$600 for amount paid to a tug-boat subsequently employed to bring the vessel to port; the master was sailing on agreement with his owners to make that voyage on one-half the shares. The court gave to the owners \$3,600, of which one-half belonged to the captain under his agreement, and awarded the captain, in addition, \$500; it gave to the mate \$800, and to the seamen, all told, \$500.

In *The Pride of Canada*, *Browning & Lush.* 208, salvage had been awarded in a limited sum of £1,000.

The seamen filed their action for a proportionment of the salvage. The Merchant Shipping Act was pleaded in bar of their action, and held not tenable. The court decreed for the seamen; and of the £1,000 awarded gave to the owners £750, and the remaining £250 to the masters and crews, each of the two masters to take £30, and the seamen to take the balance, according to their rating.

The case of *The Steamboat Edward Howard*, 1 *Newb.* 522, was an action by a crew for the distribution of salvage. The respondent offered to deposit a fair proportion of the whole compensation allowed. The amount of the salvage was \$10,000. The libellants were firemen, and the court awarded to three of them \$50, and to four \$30. The court said: "In cases like

the present, a very large proportion of the salvage compensation must necessarily be awarded to the salving vessel, inasmuch as it was mainly through the admirable equipment and apparatus of such boats as the 'Robb' and the 'Iroquois' that the exertions of the salvors were rendered effectual." In that case, as the amount awarded by the court had been previously tendered, the court decreed costs against the libellants.

In the case of *Studley v. Baker*, decided by Judge Lowell, in Massachusetts, in 1873, 2 Low. 207, the facts are these:—

A schooner fell in with a frigate ashore, and assisted in carrying out an anchor, and in lightening her, being employed in that service for two days; the vessel was saved, and the government paid the owners of the schooner, one of whom was the master, the sum of \$3,500. A receipt was given by the owners in the names of themselves and for the master and crew, and they testified that they did not consider the libellant in the settlement, he being mate of the vessel. The learned judge, after taking into consideration the question of his jurisdiction to entertain the case of the mate against the owners, and deciding the same affirmatively, passes to the question as to the rights of the crew to participate in the salvage money. It was held that the amount paid was for the salvage due to the owners and crew, and he says:—

Nor is it any less certain that every man on board a sailing-vessel, who is ready to do what he can, is to share in the remuneration. The whole matter depends on a large and liberal policy, which looks almost as much to the general interests of commerce as to individual deserts. Those owners of ships whose crews are engaged in salvage always receive something, whether they can prove an actual damage

to their voyage or not. The only difficulty is in the distribution. Considering it is true, as set up by the owners, that the use of their vessel was chiefly as a lighter worked by the men of the "Guerrière," and that no great labor or hardship was imposed on the libellant, and that the owners have been at all the trouble of obtaining the money from the United States, I think it would be but fair to give a somewhat larger share than usual to the owners. Taking them to have received by this time, including interest, \$1,600, I divide it into eighths, of which the libellants and other men would be entitled to one, or \$200 each.

There were but three persons on the schooner, — the master, the mate, and the cook ; so therefore the amount awarded by the court was in the proportion of one-fourth to the crew, and three-fourths to the master and owner.

In the case of *The Brig C. W. Ring*, 2 Hughes, 99, a brig loaded with six hundred bales of cotton, which had lost her anchors and masts in a storm at sea, and was sailing in distress near a lea shore, with a jury mast under a foretop-staysail, hailed a large steamer for a tow, and was taken into port in seven hours, the storm having abated, and the weather growing calmer during the tow. *Held*, that out of the salvage money decreed, the owners of the steamer should receive three-fifths, and the master, officers, and crew two-fifths.

In the reasons for judgment, the court comments upon the change of the ancient doctrine, and the necessity of awarding the owners a larger share than to the officers and crew.

In the case of *The Scindia*, reported under the head of *The True Blue*, L. R. 1 P. C. 259 (foot of page), the Privy Council, after awarding to the "Araminta" £1,500, distributed it in this manner: "To give £1,000

to the owners, the salvage having been, in reality, chiefly performed by the vessel; £200 to the master, for the responsibility incurred; and £300 amongst the crew."

Proportion of Salving Vessel.—In apportioning salvage reward between the ship-owner and the seamen, the court, where the salving vessel is a steamer, takes into consideration the fact that the chief risk in the undertaking, and all the expense, falls upon the owners; and it has, since the introduction of steam power, awarded to this class of owners a much higher proportion than owners formerly received.¹

The court will also take into consideration the obvious fact, that in a great majority of such cases the service is rendered by the steam-vessel herself, and does not arise from any extraordinary exertions on the part of the master and crew.²

In the last-cited case of *The Vanguard* it is laid down that if the salving vessel be a passenger-ship, that circumstance will also be taken into consideration in the apportionment of the salvage between the owners and crew. This is based upon grounds of public policy, as the owners of steamers, especially when carrying passengers and mails, might, unless liberally rewarded, discourage the masters of their vessels from engaging in any salvage where human life is not in peril.³

And where the steamer sustains any damage whilst

¹ *The Martin Luther*, Swa. 287; *The Enchantress*, Lush. 98.

² *The Beulah*, 2 Notes of Cases, 61-63. See also *The Perla*, Swa. 230-232; *The Mary Jane*, 11 L. T. N. S. 85. And *The Vanguard*, 5 Irish Jur. N. S. 364.

³ *The Martin Luther*, Swa. 287-290; *The Charles*, Newb. 329; *The Henry Ewbank*, 1 Sumn. 400; *The Nathaniel Hooper*, 1 Sumn. 541.

rendering the service, the owner is entitled, before the amount awarded is apportioned between himself and the crew, to deduct the expense of the repairs, and a reasonable sum for the loss of the ship's services while she is repairing.¹

In the case of the *New Harbor Protection Company v. The Tornado*, in the United States District Court for the District of Louisiana (not reported), which I have heretofore cited on another point, Billings, Judge, said :—

But this does not do away with the force of the considerations which spring from the circumstances of the case, but leaves the court, while setting aside the agreement as an agreement, to fix the relative claims of vessel and seamen to compensation, and to determine the proportions of each, according to the equities of the parties, as they existed without any contract.

Such a case has not been before this court. Here is a vessel built and equipped on purpose to do salvage service; the seamen know very well that they are to do nothing else. They are not, therefore, as in case of ordinary vessels, to receive wages as seamen, salvage services being incidental; but they are, from the beginning to the end of their employment, to engage in salvage services and nothing else; and knowing this, they receive from the owners of the "Protector" for months, fixed wages, which are not to be reduced in case no salvage service is performed. It seems to me, from a consideration of these facts, that the expenses which the "Protector" incurred in performing these salvage services, which is, according to the evidence, about \$2,400, should be first deducted from the gross amount awarded to the "Protector," and treated as belonging to the vessel before there is any division, and that of the residue the vessel should receive three-quarters and the crew one-quarter, according to their rank on the pay-roll.

¹ *The Spirit of the Age*, Swa. 286.

The fact that both vessels belonged to the same owner furnishes no ground of exemption from a claim for a salvage compensation by the master and crew of the salving vessel. Proof of a contract, usage, or understanding that no claim shall be made, will defeat it.¹

The owners of fishing-vessels also generally receive a larger share of salvage than the owners of other vessels, the court taking into consideration the interruption to their occupation occasioned by the salvage service, and the fact that the wages paid to their mariners are greater than those of the crews of other vessels.²

If the salving vessel was actually engaged in fishing at the time when she rendered the assistance, the court will, in apportioning the salvage, take into consideration the interruption of the employment.³

The court will not, however, lose sight of its ancient principle of adequately and liberally rewarding the personal service of the men engaged; and, as a general rule, the owners will not be permitted to take more than a moiety of the net sum received after deducting expenses.⁴

The fact that a considerable sum has been awarded to the owners of the salving vessel in a suit brought by

¹ The Colima, 5 Sawyer, 181, See, as to the proportions awarded owners, The Himalaya, Swa. 515; District of California.

² The Louisa, 2 W. Rob. 22-26. The Spirit of the Age, Swa. 286;

³ The Louisa, 6 Notes of Cases, The Earl Grey, 8 Hagg. 363; The Supp. 531. See also The Albion, Columbia, 8 Hagg. 428; The Albion, 8 Hagg. 254, and The Deveron, 8 Hagg. 254; The Waterloo, 2 Dods. 433; The Morning Star, 14 L. T. n. s. 420; s. c. 6 Blatchf. 154; The

⁴ The Enchantress, Lush. 93-96; Vine, 2 Hagg. 1; The Charlotte, 1 The Princess Helena, Lush. 190. W. Rob. 68; The Jane, 2 Hagg. 1; But see The Saint Nicholas, 1 Lush. The Salacia, 2 Hagg. 262; The Nicolina, 2 W. Rob. 175; The Beulah, 1 W. Rob. 477; The Hope, 8 Hagg. 423.

them, does not affect the amount to which the master and crew, who have instituted a separate suit, are entitled.¹

The tendency of the courts of the United States seems to be to look upon the claim of the owner of the salving vessel with even a higher degree of favor than they have met with in the English court of admiralty.²

In some cases the owners have been awarded one-half,³ two-thirds,⁴ and even three-fourths.⁵

In one case, however, where the peril encountered was considerable, the amount awarded small, and the salvors numerous, the court divided the salvage into thirteen equal parts, giving each salvor, including the owners, one.⁶

The courts of the United States also follow the practice of the English admiralty, in giving the owners of steamers which render salvage service a larger proportion than is generally awarded to other vessels.

In the case of *Mason v. Ship Blaireau*, 2 Cranch, 240, Marshall, C. J., at page 270, says: —

The claim of the master to the salvage allowed his apprentices is one which the court feels no disposition to support, unless the law of the case be clearly with him. The authorities cited by his counsel do not come up to this case. The right of the master to the earnings of his apprentice, in the way of his business, or of any other business which is substituted for it, is different from a right to his extraordinary earnings, which do not interfere with the profits the master may legitimately derive from his service. Of this

¹ The *Aletheia*, 13 W. Rob. 279.

² The *Rising Sun*, Ware, 385.

³ The *Delphos*, 1 Newb. 412;

⁴ The *Waterloo*, Blatchf. & How.

The *Blaireau*, 2 Cranch, 240; The 114.

Henry Ewbank, 1 Sumn. 400; The

⁵ La *Belle Creole*, 1 Pet. Adm.

Boston, 1 Sumn. 330; The *Cora*, 2

31, at p. 45.

Wash. 80.

⁶ The *Stewart*, Crabbe, 218.

latter description is salvage. It is an extra benefit, the reception of which does not deduct from the profits the master is entitled to from his service. But the case cited from Robinson, where salvage was actually decreed to an apprentice, is in point. The counsel does not appear to the court to construe that case correctly, when he says that it does not determine the right as between the master and the apprentice. The fair understanding of the case is, that the money was decreed to the apprentice, and was to be paid for his benefit.

Considering the case strictly on principle, that portion of the salvage allowed ought to be paid to the master which would compensate him for having risked the future service of his apprentice; but as this would not amount to a very considerable sum, and as a liberal salvage has already been decreed to the master, this further allowance will be made in this case.

For the English decisions as to apprentices, see *The Columbus*, 2 W. Rob. 186-188 and *The Two Friends*, 2 W. Rob. 349-353.

In this last case, that of *The Two Friends*, Dr. Lushington held the allotment of salvage to be a personal reward for labor and skill; and decided that, whether the salvors were apprentices or not, no one had a right to interfere with the property which belonged to them.

The United States courts have held that slaves earning salvage are entitled to have it decreed to them for their own use.¹

In one case, however, the whole sum was paid to his owner, on his agreeing to manumit the slave, and to pay him one-fifth part of the salvage money.²

In the case of *The Ship Charles*, Newb. Adm. 329, it was held, that where some of the salvors decline or

¹ *Small et al. v. Goods saved from the Messenger*, 2 Pet. Adm. 284.

² *The Blaireau*, 2 Cranch, 240.

refuse to claim salvage, their shares will not revert to the benefit of their co-salvors, but to that of the owners of the property.

Agreement for Apportionment. — Salvors may, and frequently do, agree between themselves as to the division of the sum awarded to them. If, however, the agreement should be inequitable as regards any of the parties, the court of admiralty will refuse to be bound by it, and will decree an equitable apportionment of the salvage.¹

In the case of the British Steamer *Plainmeller v. The Steamer Adirondack*, tried in the United States District Court for New York, and reported in the *New York Maritime Register*, May 12, 1880, p. 4, a libel suit was brought by the captain of the "Plainmeller" to secure the sum of £4,000 upon an agreement by writing made by the master of the "Adirondack" to pay that sum for a salvage service. Judge Choate said, that he thought the captain of the "Plainmeller" took advantage of the situation of Captain Roberts, who was inexperienced, this being his first voyage as master, to exact from his circumstances of present distress an exorbitant and grossly excessive amount. In the course of his decision Judge Choate says: "The apprehension of the learned counsel for the libellant, that the setting aside of such contracts will tend to discourage the rendering of salvage service, is unfounded, as long as the courts award, as they endeavor to do in every case, such a sum as will be not only a *quantum meruit* for the time and labor employed in the service, but a liberal reward for the assistance rendered and the perils volun-

¹ *The Enchantress*, Lush. 93-95; also *The Silver Bullion*, 2 Spinks, *The Louisa*, 2 W. Rob. 22; *The 70*; *The Mary Anne*, 11 L. T. N. S. Beulah, 2 Notes of Cases, 61. See 85.

tarily incurred." A decree is ordered to be entered for the libellants for \$7,582.

Abandonment of Salvage.—By section 4535 of the United States Revised Statutes it is provided that every stipulation by which any seaman consents to abandon any right which he may have or obtain in the nature of salvage shall be wholly inoperative.

As I am aware of but a single decision on the above section (and that decision is not reported), I will fully state the case, although I am reluctantly compelled therein to speak of myself and of my defeat.

The title of the case is "United States District Court, District of Louisiana, No. 11,207; New Harbor Protection Company *v.* Ship Tornado, Cargo and Freight, on the intervention of certain of the officers and crew of the 'Protector.'"

On the 27th of February, 1878, I caused to be filed the libel of the New Harbor Protection Company.

Before the adjournment of court, in June, I had testimony taken of various witnesses in behalf of said corporation, and among others of Davidson, the mate of the "Protector," who was one of the intervenors.

I also caused to be taken the testimony of James Grant, the engineer of the "Protector," who was another party to said intervention.

On the 8th of January, 1879, Davidson and Grant, with some others of the crew of the "Protector," filed their interventions for a portion of the salvage compensation.

In my libel for the owners of that boat, I claimed for them all the salvage earned by the "Protector," and asked nothing for her officers and crew, as I was of opinion that, under their contract, their services in salvage cases inured to the benefit of the New Harbor Protection Company.

This opinion was entertained by me when, long ago, I framed that agreement, and in February, 1878, when I filed the libel for the said corporation. It was founded on my belief that section 4535 of the United States Revised Statutes (which provides that agreements by *seamen* to abandon claims for salvage shall be inoperative) *did not apply* to the officers and crew of the "Protector."

To the intervention of Davidson and Grant, officers, and of certain of the crew of the "Protector," I opposed their agreement, dated 1st February, 1878, and their receipt in full, dated 28th February, 1878.

These *dates* cover the period during which the salvage services were rendered to the "Tornado" by the corporation's iron fire-boat "Protector."

The agreement was signed by said Davidson and Grant, and the other intervenors of the "Protector's" crew, and was witnessed by Davidson. That was *prior* to the salvage service. The following is a copy of the agreement, the original of which is to be found in the record (omitting in this copy, for the sake of brevity, the signatures, the heading, &c.) : —

We, the undersigned, hereby agree to ship on board the steam iron fire-boat "Protector," in the employment or capacity of the station or rank of employment set opposite our respective names, under the following terms and conditions, and during the pleasure of the corporation known as the New Harbor Protection Company, viz. : —

Whereas, the steam iron fire-boat "Protector," being owned and supported by said corporation, is not engaged in the general towing or coasting business, but has been built and fitted up at great expense for the express purpose of saving property in jeopardy from fire and water in and about the harbor of New Orleans, by means of immense steam-pumps, large Babcock engines, steam elevator, and other very costly apparatus, and

also to relieve vessels and steamboats in distress in the Mississippi River, on any or all of which salvage may hereafter be due and claimed by said corporation; and whereas, the monthly running expenses of said steam iron fire-boat "Protector" are and must necessarily be very large: Now, we, the undersigned officers and crew, herein and hereby express our free and earnest desire and determination not to assume any portion of said costs or expenses, nor to risk or hazard any portion of our pay or emolument, upon the contingency of such earnings of salvage; and we hereby agree and consent to ship as part of the crew of said steam iron fire-boat "Protector," with the full knowledge, understanding, and agreement that we are to be entirely compensated for any and all services we may render whilst so employed, by the payment monthly of the sums set opposite our names and the daily furnishing to us of provisions as usual on shipboard, *and these, whether circumstances occur to call forth our services or not.*

And for and in consideration of these wages and provisions we do hereby, each for himself, disclaim, renounce, and abandon to the said corporation, owners of the "Protector," all and any sum or sums or apportionment that may or might otherwise be due us, as officers or crew of said steam iron fire-boat "Protector," from or by reason of any and all salvage cases in which the New Harbor Protection Company, or the steam iron fire-boat "Protector" and owners, may be salvors. We acknowledge that the above has been read by or to us, before signing, and in presence of the following witnesses.

The following is a copy of their receipt in full (with like omissions of their signatures, &c.), which receipt in original I also offered in evidence. The original was signed by all of these intervenors *after* the salvage services were rendered.

We, the undersigned, officers and crew of steam iron fire-boat "Protector," hereby acknowledge to have received from the New Harbor Protection Company the sums set opposite

our names, in full for our wages and all services of every kind rendered by us on board of said "Protector," from and to the dates mentioned below. New Orleans, 18 .

To this agreement and receipt the proctor for Davidson, Grant, and the other intervenors opposed the aforesaid section 4535 of the United States Revised Statutes.

I replied that said section is not applicable to these intervenors, and for the following reasons:—

The title which contains section 4535 of the United States Revised Statutes is, "Title LIII, MERCHANT SEAMEN." Now, *seamen* are defined to be:—

"The individuals engaged in navigating ships, barges, &c., *on the high seas*."—McCulloch's Commercial Dictionary.

"Those employed for this purpose upon rivers, lakes, or canals, are denominated *watermen*." Ibid.

"Seaman—one who practises navigation *at sea*."—Worcester.

But the title is, not only of seamen, but *merchant seamen*.

A merchant is "an importer or exporter of goods."—Webster.

Merchantman—a ship employed in trade. Ibid.

Seaman—one who follows the *sea* as a profession or for a livelihood.—Zell's Popular Encyclopædia and Universal Dictionary of English Language, Science, Literature, and Art.

A perusal of all the sections of Title LIII shows that they relate to those who "go down to the sea in ships."

The testimony which I offered proves that the "Protector" *never goes* to SEA, nor out of this harbor, and that the agreement existed two years prior to the

fire on the "Tornado," during all which time Grant and Davidson were employed on the "Protector;" and the latter made out the shipping articles.

In the case of *The Neafie*, Judge Woods distinguished the tugs towing between the city of New Orleans and the mouth of the river Mississippi from those plying in the *harbor* of New Orleans.

The reason for enacting this section 4535, and the whole title on *Merchant Seamen*, the evil which existed and the remedy for that evil, did not seem to my humble judgment to apply to these watermen. "*Cessante ratione legis cessat ipsa lex.*"

Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself.

If the *motive* of the law does not apply, the law does not.

The *ratio legis*, in reference to this section 4535, I considered to be, that seamen are unprotected and ignorant, and need counsel; rash and thoughtless, and require indulgence; imprudent, credulous, and easily overreached.

They are "the wards of the admiralty." They may have gallantly rescued persons and property in the middle of the ocean, amidst roaring seas and angry billows, with great daring and enterprise. The law did not intend that such bold, brave seamen should be deprived of the reward of valor and intrepidity, or that the incentives to heroic conduct should be removed by some weak, overreaching agreement (for an inadequate consideration), to renounce their claims to salvage rewards, perhaps in a foreign port, far distant from any friends or advisers.

But these watermen on the iron boat "Protector" never go out of this harbor, and are at home, where

there is no lack of able, learned, experienced, and diligent proctors to advise all who desire to consult them.

In Newberry's Reports, p. 539, it was held that the act of July 20, 1790 (1 U. S. Stat. at Large, p. 13), for the government and regulation of *seamen* in the *merchant* service, DID NOT APPLY to an engineer of the propeller employed as a tug-boat from the mouth of the river Detroit to Port Huron, the propeller *not being engaged in foreign commerce*.

Sail-makers may sue in the admiralty (Ben. § 266), but they are not "the wards of the admiralty."

But, for the sake of brevity, I must omit all my other and further arguments, and proceed to the decision, for the right appreciation of which decree so much as I have above stated seemed to be necessary.

In deciding the question, Billings, J., said:—

The whole question depends upon the further question as to whether the "Protector" was a merchant-vessel. If she is a merchant-vessel, the seamen on her come within the purview of this section. It was clearly shown that her business was substantially to aid vessels in distress in the port of New Orleans upon the Mississippi River. But I think she is, nevertheless, a merchant-vessel. There are but two classes of vessels known to the law. They are those which are in the public naval service and those which are in the merchant service. There can be no third class. The intent and meaning of the registration and license laws for vessels forbid it. See Benedict's Admiralty, § 235. Since she is in the merchant service, the section under consideration applies to her, and the agreement executed by the crew of the "Protector" is, by the act above referred to, rendered inoperative.

I have on a previous page quoted that portion of the decision wherein the judge, from a consideration

of the facts, awarded only one-fourth of the salvage reward to the crew, according to their rank on the pay-roll, and three-fourths to the owners of the "Protector;" and decreed that the expenses which the "Protector" incurred in performing these salvage services (about \$2,400) should be first deducted from the gross amount awarded to the "Protector," and treated as belonging to the vessel, before there was any division.

In the same case the judge awarded to the intervenors, who were owners of other vessels, and their crews, one-half to the owners, and one-half to their crews.

The awarding of one-half to the intervening crews in the above case by Billings, J., was probably induced by the fact that the case of *The Tornado* was decided by him in the November term, 1879; and in the April term, 1878, Bradley, Justice, had awarded one-half to the crews in the case of *Sonderburg v. The Tow Boat Company*, 3 Woods, 146.

In this last-cited case it is said that the rule adopted in this circuit for the apportionment of salvage is to give one half to the salving vessel and the other half to her officers and crew, in proportion to their rate of wages.

It will be seen by reference to *The Suliote* (not reported, but decided after the case of *Sonderburg*), heretofore cited by me as No. 9082, United States Circuit Court for the District of Louisiana, that Bradley, Justice, decreed to the crews, not one-half, but to the crew of the "*Maude Wilmot*" two months' wages, to the crew of the "*Belle Darlington*" three months' wages, and to the crew of the "*Protector*" four months' wages.

The rule of apportionment as laid down in *Sonder-*

burg *v.* The Tow Boat Company (*ubi supra*), of decreeing one-half to the crew, was adopted in the Circuit Court for the District of Louisiana, by Pardee, J., in the case of Averill, cited on p. 164.

With regard to the English law as to the abandonment of salvage, I solicit leave to refer to the case of *The Ganges*, L. R. 2 Adm. 370.

It cites the Merchant Shipping Act 1854 (17 & 18 Vict. ch. 104), § 182, which enacts that "every stipulation by which any seaman consents to abandon any right which he may have or obtain in the nature of salvage shall be wholly inoperative."

But it would appear that the Parliament found it necessary to adopt a declaratory law. For in this case of *The Ganges* (*ubi supra*) Sir R. Phillimore, in his decision, cites the amended act 1862 (25 & 26 Vict. ch. 63), § 18. This later act declares that the above section 182, of 17 & 18 Vict., "*does not apply* to the case of any stipulation made by the seamen belonging to any ship, which, according to the terms of the agreement, *is to be employed on salvage service*, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship."

Thus, it is obvious that in Great Britain an agreement, such as the owners of the "*Protector*" made, with her officers and crew, which I have cited, *ante*, *would be operative even as to seamen*.

I would therefore respectfully suggest, that, if thought desirable, the Congress of the United States should be asked to enact a declaratory law like that adopted by the British Parliament.

For the manner in which the acts of Parliament have been construed, see *The Ganges*, L. R. 2 Adm.

370. See also *The Enchantress*, Lush. 93; *The Pensacola*, B. & L. 306; *The Pride of Canada*, B. & L. 208-210; *The Mary Anne*, 11 L. T. N. s. 85.

It is almost unnecessary to observe that the court of admiralty will not recognize any local custom which disentitles a seaman to a share of salvage which he has assisted in earning.¹

If, however, the local or customary agreement be an equitable one, as if, for instance, it provides that of the crew of a life-boat company, those who stay shall be rewarded and those who go, the court will favorably consider it.²

If the master should retain a greater proportion of salvage reward received by him than the owners consider him entitled to, they cannot set it off against his claim for wages, but must institute a suit for apportionment, and bring into court the amount they received.³

And where salvage money has been paid into court for the purpose of distribution, the court will not decree payment out of the fund of advances made to the salvors by their agent; and has refused to do so even where the persons receiving the advances were minors, against whom the lender of the money had no remedy at law.⁴

It is the general practice of courts of admiralty, in cases of salvage, to decree that a minor's share of the reward shall be his own property.⁵

In case any of the salvors should lose their lives in rendering the service, or should die before the appor-

¹ *The John*, Pritch. Dig. p. 830. . ⁴ *The Louisa*, 2 W. Rob. 22. See

² *The Enchantress*, Lush. 93-97. also *The Louisa*, 3 W. Rob. 99.

³ *The Princess Helena*, Lush. 190. ⁵ *Dunlap's Adm. Pr.* 88.

tionment should take place, the court will direct their shares to be paid to their representatives.¹

Although co-salvors almost invariably join in the same suit, their interests are not joint, but several; and, consequently, except under very exceptional circumstances, payment of the salvage to one does not discharge the claims of the rest, unless they concurred in or ratified the transaction.²

Delay. Stale Demands.— Where, pending a suit for salvage in the name of the master and owners of the salving vessel, an arbitration is had, and an award made under which a certain sum is received, the crew are entitled to share therein in the proportion of one half to the salving vessel, and the other half to her officers and crew in proportion to their rate of wages; and where the salvage money was withheld by the owners, and certain of the salving crew remained in the employ of the ship-owners without making claim for their share of the salvage money, for fear of discharge and loss of employment, such apprehension was a sufficient reason for not prosecuting their claim sooner; and where, under such circumstances, the claim is not prosecuted for a period of over nine years, a plea of staleness of demand constitutes no defence.³

Of Suits by Salvors v. Co-salvors.— When the petty officers and crew of a salving vessel, who have sued her owners for their share of the salvage, did not know the amount of salvage that had been received by the owners until just before the bringing of their

¹ The Marquis of Huntly, 3 Hagg. 246-249; The Hope, 3 Hagg. 423-425.

² The Sarah Jane, 2 W. Rob. 111; The Britain, 1 W. Rob. 40.

³ W. W. Averill *et al.* v. E. A. Yorke *et als.*, by Pardes, J., United States Circuit Court, Louisiana District, April Term, 1881 (unreported).

suit, delay in bringing the suit could not be set up as a defence.¹

A libel *in personam*, brought by salvors to recover their share of salvage against another salvor, who, two years before, had received, and still held, the money belonging to libellants, could not be defended against on the ground that the claim was stale.²

SECTION VI. — CONTRIBUTION.

The ordinary usage of the court of admiralty in apportioning the liability for salvage between the ship and cargo is to take the whole value of the ship and cargo, and assess the amount of remuneration upon the whole, each paying its due proportion.³

If the owner of the ship should pay the whole amount claimed for salvage, in order to obtain the release of the ship and cargo, he will have a lien upon the cargo for the amount which it is bound to contribute towards the salvage.⁴

Silver or Bullion. — As regards the doctrine that an exception to the rule, that the cargo and ship contribute to salvage in equal proportions, is said to exist where the cargo consists of silver and bullion, in the case of *The Longford*,⁵ the court held that "with regard to specie it is like any other cargo."

The whole article, from the London Law Times and

¹ *Sonderburg v. The Tow Boat Company*, 3 Woods, 143.

² *Ibid.*

³ *The Emma*, 2 W. Rob. 815-819. See also *The Mary Pleasants*, Swa. 224; *The Maria Jane*, 14 Jur. 557; *Briggs v. The Merchant Traders' Ship, Loan, and Insurance Association*, 13 Q. B. 167.

⁴ *Briggs v. The M. T. S. L. & I. Assoc.*, *ubi supra*.

⁵ *Adm.*, Feb. 17, 1881, *Law Times Reports*, n. s. 254; *American Law Review*, vol. xv. No. 6 (Boston), June, 1881.

American Law Review, is so interesting and lucid, that I here insert it in its entirety : —

No maxim perhaps is more frequently insisted on than that which forbids a judge to decide more than is necessary for the case in hand. At the same time none is more difficult to adhere to, and the judgments even of our best judges abound in *obiter dicta*. A curious instance of this arose a few days ago in the admiralty division in the case of the "Longford." This vessel had the misfortune to get into a collision in the river Mersey, and, being obliged to accept assistance, was subsequently sued for salvage services rendered. At the time of the services she had on board a clerk of the Bank of Ireland with £50,000 in specie in his possession, and its owners contended at the trial that as, even if the ship had sunk at once before the arrival of assistance, the gold could have been easily recovered by divers, it ought not to contribute to the salvage award in the same proportion as the ship and the rest of the cargo.

The earliest reported case of this character is *The Jonge Bastiaan*, 5 C. Rob. 322, which was decided in 1804. In that case there was first an unsuccessful attempt to save the vessel by a single smack, at the end of which the master left the vessel in the smack, taking with him a quantity of bullion, and a second successful attempt by six smacks. At the trial it was contended that the bullion should not contribute, but Sir W. Scott (Lord Stowell) overruled the objection. The next reported case in which the principle of making separate allotments on the ship and on the cargo seems to have been discussed is *The Vesta*, 2 Hagg. 193, which came before Sir C. Robinson in 1828, and there that learned judge distinctly says : "The principle of giving specific proportions of the property saved is an inconvenient rule in itself," and "I do not approve the distinction ;" and he gives as his grounds "that the difference of danger to which the property is exposed would be a most difficult criterion to be applied in most cases," and that "to uphold such a notion would lead to preferences in saving one part of a cargo be-

fore another." It is true that in this case no part of the cargo was silver or bullion, but it cannot be said that the subject was not present to his mind, for in the course of his judgment he incidentally remarks: "Suppose, for instance, a casket of jewels on board which might be saved with great facility; it could not be contended that the salvors would only be entitled to a small gratuity for carrying it on shore." This being the state of the law on the subject, the case of *The Emma*, 2 W. Rob. 319, a timber-laden vessel, came before Dr. Lushington for decision in 1844, and it is in the judgment delivered in that case that the *dictum* occurs which was the sole ground of the contention just raised by the owners of the specie in the case of "*The Longford*," and overruled by Sir R. Phillimore: "The ordinary usage," says Dr. Lushington, "is to take the whole value of the ship and cargo, and assess the amount of the remuneration on the whole, each paying its due proportion. I am not aware, excepting in the instance of silver or bullion, that any distinction has ever been taken, or that parties have been permitted to aver that the services were of greater importance to the ship than to the cargo, and therefore that the ship should bear the lesser burden, or *vice versa*. Such a distinction, if acknowledged, would in many cases lead to intricate litigation and to questions of great nicety, which it would be exceedingly difficult to adjust. With respect to silver and bullion, it is true that a distinction is wisely and properly permitted, and this upon the consideration that it is more easily rescued and preserved than more bulky articles of merchandise." This is perhaps one of the most arbitrary *dicta* ever promulgated. No foundation for the rule is to be found of prior date, and Sir R. Phillimore disposed of it in very few words. "The attention of the court," said the learned judge, "has been drawn to other cases, especially to the case of *The Jonge Bastiaan*, *ubi supra*, from which it is clear that if any such rule as that referred to existed it would have been mentioned. With regard to specie, it is like any other cargo."

This decision has removed a difficulty felt by all the writers of text-books (2 Parsons, 796; 2 Pritch. Dig. 796)

who have noticed the point, whose only course has been to place the conflicting decisions side by side and leave the matter in doubt.

It has further brought the English law into conformity with the American,—a desirable thing from an international point of view. The *T. P. Leathers*, 1 Newb. Adm. 421; *Warder v. La Belle Creole*, 1 Pet. Adm. 46; *Marvin on Wreck and Salvage*, 174.

It has, thirdly, brought the rule in salvage cases into conformity with both the English and American rule in cases of general average. No valid distinction can be drawn between the two cases, and in the latter no doubt has ever rested on the point. From *Magens* and *Emerigon* to Chief Justice *Best* (*Brown v. Stapylton*, 4 Bing. 119), all concur in the principle that all cargo put on board for the purposes of commerce, however light its weight, and considerable its value,—gold, silver, or jewels,—must contribute to general average losses for its full value, and a doubt has even been raised as to whether the valuables of passengers not actually carried about their persons are not liable to contribution.

In connection with what is above said as to contribution to general average, I here make an extract from “*The Law of General Average (English and Foreign)*,” by *Richard Lowndes* (3d edition), London, 1878, at p. 68, ch. 5:—

Salvage and Analogous Expenses.—We come now to the second great class of general average losses, namely, extraordinary expenditures. These may be conveniently divided under two heads: salvage or expenses analogous to salvage, and expense consequent on seeking a port of refuge.

§ 1. *Of Salvage in General.*—As jettison is regarded as the type or simplest form of a general average sacrifice, so salvage, it has been said, may be regarded as the type of a general average expenditure. This, however, is only from one point of view. Salvage is always an extraordinary ex-

pense, and is always incurred in order to rescue the thing salvaged from danger: in these respects it is a perfect form of general average; but it is not always incurred for the common safety of ship and cargo. Whenever it is so, it is general average.¹

In the distribution of proceeds, salvage services rendered in getting a vessel off a reef are entitled to priority of payment as against a claim for general average arising from the jettison of a portion of her cargo.²

The expenses of saving ship and cargo are proper subjects of general average.³

Salvage is generally decreed on all property saved on the sea or wrecked on the coast of the sea.⁴

The uniform rule is to consider the service performed as one general salvage service, to be compensated by awarding a certain *quantum* of the whole proceeds.⁵

No distinction is made in awarding salvage between the vessel and cargo, or between different portions of the cargo, nor will the court assess a different ratio upon different parts of the property.⁶

¹ There is one kind of salvage which is treated like general average, though not for the common safety, and that is, salvage of life. Formerly, no reward in the nature of salvage was legally due to those who saved life only, without also saving property; although, when both were saved by the same salvors, a higher reward was always given on account of the saving of life, and the whole of this augmented sum, being nominally for saving the property, was paid by ship and cargo ratably. Thus, indirectly, or rather in a disguised manner, the salvage of life was always treated as general average.

² The Spaulding, 1 Brown Adm. & Rev. Cases, 310.

³ *McAndrews v. Thatcher*, 3 Wall. 366; *Birkley v. Presgrave*, 1 East, 220; *The Congress*, 2 Biss. 42; *Montgomery v. Tyson*, 1 Low. 133; *Joy v. Allen*, 2 Woodb. & M. 303; *Williams v. Suffolk Ins. Co.*, 3 Sumn. 270, 510; *Peters v. Warren Insurance Co.*, 1 Story, 463.

⁴ *The Cheeseman v. Two Ferry Boats*, 374; *The Emulous*, 1 Sumn. 207.

⁵ *Montgomery v. The T. P. Leathers*, Newb. 421.

⁶ *Montgomery v. The T. P. Leathers*, Newb. 421; *The Albion Lin-*

Salvage should be awarded out of what remains after the duties on the gross amount are paid.¹

Salvage is awarded in case of goods cast ashore, notwithstanding a State law is in force which applies to the case.²

Government property is liable to contribute to the salvage.³

So of cotton belonging to the United States.⁴

Freight is liable to pay salvage, as well as the ship and cargo.⁵

The presumption is that prepaid freight can be recovered back as not earned in case of the loss of the cargo, and therefore should be considered as part of the property saved to the owners of the ship.⁶

The crew contribute to salvage in whaling and fishing voyages, as it is only on what escapes the perils of the seas that the lays can be reckoned.⁷

Although a salvage service may be meritorious and valuable, yet the court of admiralty being limited to the remedy by sale of the property saved, salvage is not allowed for rescuing written documents, such as bills of exchange, or evidences of debt or of title.⁸

Nor is it awarded on money found on a drowned

coin, 1 Low. 76; *The Vesta*, 2 Hagg. Adm. 189.

¹ *The Waterloo*, Blatchf. & H. 128; *Concklin v. The Harmony*, 1 Pet. Adm. 34.

² *Stevens v. The Argus*, Bee, 170; *Peisch v. Ware*, 4 Cranch, 347.

³ *The Davis*, 10 Wall. 18; *Brown v. Stapylton*, 4 Bing. 119; *The Marquis of Huntly*, 3 Hagg. Adm. 246; *The Lord Nelson*, Edw. Adm. 79; *United States v. Wilder*, 3 Sumn. 308; *The Siren*, 7 Wall. 161; *Briggs v. Light Boats*, 11 Allen, 157.

⁴ *The Siren*, 7 Wall. 161; *The S. L. Davis*, 6 Blatchf. 138; s. c. 2 Bank. Reg. 3.

⁵ *The Dorothy Foster*, 6 C. Rob. 88; *The Progress*, Edw. Adm. 210.

⁶ *The Bark Loveland*, 5 Fed. Rep. 105 (1880).

⁷ *Montgomery v. Tyson*, 1 Low. 134; *Utpadel v. Fears*, 1 Sprague, 559; *Reed v. Hussey*, Blatchf. & H. 525; *The Holder Borden*, 1 Sprague, 144.

⁸ *The Emblem*, 2 Ware (Dav.), 61.

passenger,¹ or on clothing of the master and seamen left on board an abandoned vessel.²

But for saving the trunks of a passenger containing a quantity of silver coin salvage was allowed.³

The owner of the goods saved should pay salvage in proportion to the goods saved and the advantage he receives; adding a reward as an example and incentive to others, and not according to the property of the salvor.⁴

SECTION VII. — MISCONDUCT OR NEGLIGENCE OF SALVORS.
EFFECT ON THEIR REMUNERATION.

Forfeiture for Misconduct. — As the amount to be awarded for salvage services rests entirely in the discretion of the court, it is obvious that the conduct of the salvors may have a very material effect upon their remuneration.

The court requires that those who seek its aid should come before it with clean hands; and where the salvors are proved to have misconducted themselves, their remuneration may be reduced, and even altogether forfeited, however valuable their services originally may have been.⁵

It requires a very strong case, however, to induce the court to hold salvage, once it is earned, to be entirely forfeited.⁶

In many of the cases where salvors have been charged with misconduct or negligence, compensation

¹ The Amethyst, 2 Ware (Dav.), 20.

² The Rising Sun, 1 Ware, 378.

³ The Emblem, 2 Ware (Dav.), 61.

⁴ Taylor v. The Cato, 1 Pet. Adm. 165; Warder v. La Belle Creole, 1 Pet. Adm. 31.

⁵ The Lady Worsley, 2 Spinks, 253; The Magdalen, 31 L. J. Adm. 22-24. See also The Schooner Boston, 1 Sumn. 328-341; The Bello Corrunes, 6 Wheat. 152.

⁶ The Atlas, 1 Lush. 518-528.

has been refused to them rather because their efforts were fruitless in consequence of their conduct, than from the misconduct itself.¹

There are, however, several instances where the court refused compensation, although the salvage had been successfully accomplished.²

There are many cases where the misconduct of the salvors not being of so serious a nature as to induce the court to adopt the extreme measure of visiting upon them an entire forfeiture of salvage, it has punished them by awarding a sum much less than under different circumstances they would have been entitled to.³

In *The Glasgow Packet*,⁴ a vessel went ashore near Gravesend and sank, and a number of boatmen commenced getting up various articles from her decks with boat-hooks; and having procured two anchors, and hired barges and lighters, endeavored to raise the vessel, till, upon the arrival of the owners, they were told that their services were not required, when they still continued to hover round the vessel, and obtrude their services, and some of them persisted in coming up to London in the vessel after she had been raised. The court held their conduct to be exceedingly reprehensible, and refused to award them anything in respect of the services they had obtruded on the owners after their arrival.

Although the court will, as shown in the preceding

¹ *The Duke of Manchester*, 4 383. See also *The Black Boy*, 3 Notes of Cases, 575; on appeal, 6 Hagg. 386, n.; *The San Nicola*, 6 Moore P. C. C. 91; *The Atlas*, 1 Irish Jur. 91; *The Glory*, 14 Jur. 676. And see *The Prinz Frederik*, Lush. 518.

² *The Martha*, Swa. 489. See 2 Dods. 451.
also *The Barefoot*, 14 Jur. 841; ⁴ 2 W. Rob. 306. See also *The The Lady Worsley*, 2 Spinks, 253. *Dosseitei*, 10 Jur. 865.

³ *The Dantzic Packet*, 3 Hagg.

case, refuse any reward to salvors who obtrude upon the master of a vessel assistance which he refuses to accept, yet where services are rendered to a vessel in actual distress, it will not require from the salvors very strict proof of a demand or acceptance of their help, especially where the circumstances of the case are such that the master would not be justified in refusing to avail himself of the assistance offered him.¹

Where the salvors, although they succeeded in completing the salvage, improperly refused further assistance which had been offered them at a time when the success of their efforts was doubtful, the court, to mark its sense of their misconduct, diminished the amount of their remuneration.²

The court looks with disfavor upon exorbitant demands by salvors; but although there is some authority for saying that it will reduce the remuneration where an exorbitant sum has been claimed,³ there does not appear to be any instance of its having done so.

The misconduct must, however, have been connected with the salvage service.⁴

The proof of misconduct, like that of any other criminal charge, rests upon those who impute it.

The presumption is in favor of innocence; and to establish against a salvor misconduct involving a forfeiture of salvage, the evidence must be conclusive;

¹ The Annapolis, Lush. 355-375. Rob. 259; The Magnolia, 29 L. T.

² The Dosseitei, 10 Jur. 865. See 40; The Elvira, Gilp. 60; The also The Eleanora Charlotta, 1 Henry Ewbank, 1 Sumn. 400-413; Hagg. 156, where Lord Stowell censured salvors for taking a vessel into The North Carolina, 15 Pet. 40; an inconvenient port, and unnecessarily remaining in possession. Lewis v. The Elizabeth and Jane, 1 Ware, 35; The Nimrod, 14 Jur. 942.

³ The John and Thomas, 1 Hagg. 157, n. See also The Hector, 3 Hagg. 90-95; The Towan, 2 W. ⁴ The Fielden, 11 W. Rob. 156. See The Hopewell, 2 Spinks, 249; The Centurion, 1 Ware, 477.

that is to say, it must be such as to leave no reasonable doubt in the mind of the judge.¹

The court will look with disfavor on the claims of salvors who have shown *mala fides*.²

The courts of the United States have held salvage to be entirely forfeited by bad faith and corruption on the part of the salvors.³

Robbery by the salvors of any portion of the stores or cargo of the vessel saved would, as a matter of course, if proved, be an answer to a suit for salvage.⁴

Such a charge must be distinctly proved, and where salvors are on board a vessel for the purpose of rendering her assistance, they are entitled to consume all that is necessary of the stores for the purpose of maintaining themselves whilst in the discharge of their duty; and even if there be some waste, under the circumstances, the court will refuse to look into *minutiae*, or to rely upon them.⁵

In *The Mulhouse*,⁶ part of the salving crew remained on board the derelict whilst the others returned to port in their vessel with some kegs of specie. One keg was stolen by some of those who returned, and it was held that only those who remained on board the derelict were entitled to salvage.

In *The S. A. Boice*,⁷ a vessel had been captured by a privateer, and after being partly plundered was suffered to go adrift without a crew, and the persons

¹ *The Atlas*, 1 Lush. 518. See also *The Charles Adolphe*, Swa. 153-156.

² *The Magdalen*, 31 L. J. Adm. 22, 24. See also *The Westminster*, 1 W. Rob. 229.

³ *Houseman v. The Schooner North Carolina*, 15 Pet. 40; *The Leander*, Bee, 260. See also *The Blaireau*, 2 Cranch, 239.

⁴ *The Florence*, 16 Jur. 572. See *The Dove and Cargo*, 1 Gall. 585; *The Blaireau*, 2 Cranch, 239; *The Missouri*, 18 Am. L. R. 38; *The Boston*, 1 Sumn. 328.

⁵ *The Howthandel*, 1 Spinks, 25-29. See also *The Louisa*, 2 W. Rob. 221-224.

⁶ 22 Am. L. R. 276.

⁷ 13 L. T. N. s. 65.

claiming to be salvors surrounded the vessel in small boats and plundered her of everything they could, and afterwards, on her owners arriving, assisted them in getting her off, the court held that they could not maintain their action for salvage; but as the owners offered to pay them for what they had done, they were allowed to receive a *quantum meruit* for work and labor, but without costs.

It was considered in *The Rising Sun*¹ that fraud or actual embezzlement on the part of the master would defeat the claim of the owner of the salving vessel.

But in *The Missouri's Cargo*² it was decided otherwise, the court holding that only the guilty party should suffer.

Where the salvor has been guilty of misconduct, the owner is not prevented from raising it as a defence, by the fact that he has negotiated with the view of referring the salvage claim to arbitration.³

Where the defendant in a salvage suit intends to raise the defence of misconduct on the part of the salvors, he should do so at the earliest possible stage of the proceedings.⁴

He will not be allowed to set up the charge, unless it is distinctly brought forward in the pleadings.⁵

In the case of *The C. M. Titus*,⁶ where there was collusion between the libellant and the owner of the boat prejudicial to the owner of the cargo, the libel was dismissed with costs, citing *The Lady Worsley*, 2 Spinks, 256.

The rules of admiralty which deny salvors all com-

¹ 1 Ware, 385.

² 1 Sprague, 260. See also *The Fair American*, 1 Pet. Adm. 87.

³ *The Martha*, Swa. 489; *The Purissima Concepcion*, 7 Notes of Cases, 150.

⁴ *The City of Edinburgh*, 2 Hagg. 333.

⁵ *The Minnehaha*, 1 Lush. 335.

⁶ 7 Fed. Rep. 826 (1881).

pensation when guilty of misconduct or bad faith apply not only to embezzlement, but to any misconduct,—such as false representations, exaggerating the danger or hardship, and to enhance the reward,—spoliation, smuggling, an obtrusion of unnecessary service, and a refusal to accept necessary or needful assistance.¹

Compensation presupposes good faith, meritorious service, complete restitution, and incorruptible vigilance, so far as the property is within the reach and under the control of the salvors.²

So, gross negligence or wanton injury to the property saved,³ as a neglect to inform the injured vessel beforehand of imminent and secret danger when able to give the warning,⁴ or the wilful omission to comply with a State law regulating the care and custody of wrecks, will defeat the claim to compensation for salvage services.⁵

Misconduct as to wrecked property is a failure to deliver to the sheriff, and libel in admiralty for salvage.⁶

The law visits any embezzlement, however small, with an entire forfeiture of all claim for salvage,⁷ either direct, or by connivance with others.⁸

¹ *Harley v. Gawley*, 2 Sawyer, 7; *The Bello Corrunes*, 6 Wheat. 152; *The Boston*, 1 Sumn. 341.

² *The Boston*, 1 Sumn. 328; *Cromwell v. The Island City*, 1 Cliff. 229.

³ *The Sumner's Apparel*, 1 Brown Adm. 52.

⁴ *American Insurance Co. v. Johnson*, Blatchf. & H. 10.

⁵ *Harley v. Gawley*, 2 Sawyer, 7.

⁶ *Harley v. Gawley*, 2 Sawyer, 7; *Hamilton v. Davis* 5 Burr. 2732; *Wilkie v. The St. Petre*, Bee, 83.

⁷ *Lewis v. The Elizabeth* and *Jane*, 1 Ware, 43; *Mason v. The*

Blaireau, 2 Cranch, 240; *The Rising Sun*, 1 Ware, 381; *The Boston*, 1 Sumn. 328; *Cromwell v. The Island City*, 1 Cliff. 229; s. c. 1 Black, 121; *The Barefoot*, 1 Eng. L. & Eq. 661; *The Duke of Manchester*, 2 W. Rob. 470; *The John Perkins*, 1 Law Rep. n. s. 87; *Harley v. Gawley*, 2 Sawyer, 7; *The L. T. Knights*, 1 Low. 397; *Flinn v. The Leander*, Bee, 262; *Brevoor v. The Fair American*, 1 Pet. Adm. 99; *The Bello Corrunes*, 6 Wheat. 152; *The Dove*, 1 Gall. 585; *The Missouri's Cargo*, 1 Sprague, 270.

⁸ *The Boston*, 1 Sumn. 340;

Where salvors stripped a vessel having her name and port painted on her stern, and carried the property saved directly past her home port, they were guilty of embezzlement, and forfeited their right to compensation.¹

The fraudulent acts of the master in concealing a portion of the properties saved will not deprive the crew of their right to salvage on all property saved.²

A claim for salvage is in the nature of a general lien, and any irregular proceeding on the part of the salvors furnishes reasons to diminish the reward.³

The court will mark its disapproval of tampering with the log, by condemning the vessel to pay the costs of the action.⁴

Unskillfulness. — The amount of skill and knowledge which salvors are expected to possess depends, in a great measure, upon circumstances. Although, ordinarily, where persons undertake to perform a salvage service, the court will not require them to be finished navigators, it does expect that they should possess and exercise such a degree of prudence and skill in the performance of their task as persons in their vocation in life usually do possess, and are fairly expected to display.⁵

The court will look with less leniency upon the conduct of incompetent persons who assume the character

Mason v. The Blaireau, 2 Cranch, Ware, 378. And see The Florence, 240; Spurr v. Pearson, 1 Mason, 20 Eng. L. & Eq. 697; The Barefoot, 104. 1 Eng. L. & Eq. 461.

¹ The Sumner's Apparel, 1 Brown Adm. 52.

² Peisch v. Ware, 4 Cranch, 347.

³ The Missouri's Cargo, 1 Sprague, 270; Mason v. The Blaireau, 2 Cranch, 240; The Boston, 1 Sumn. 328; The Rising Sun, 1

⁴ Freight Money of The Anastasia, 1 Ben. 16.

⁵ The Cape Packet, 3 W. Rob. 122-125.

of salvors, when there are others present willing to engage in the undertaking, and competent to bring it to a successful issue.¹

In *The Atlas*,² the general rule is stated to be that, where salvage has been finally effected, no mistake or error of judgment in the manner of procuring it, and no misconduct short of that which is wilful and may be considered criminal, and that proved beyond a reasonable doubt by the owners resisting the claim, will work an entire forfeiture of salvage.

In *The Duke of Manchester*,³ *The Neptune*,⁴ *The Dygden*,⁵ and *The Lockwoods*,⁶ which are cited as authorities for the proposition that want of skill occasions a forfeiture of salvage, no complete salvage was effected, the efforts of the salvors, in consequence of their own negligence, resulting in no benefit to the vessel.

Although it may be a question of doubt whether negligence or unskilfulness in the salvors will work an entire forfeiture of salvage, still, if the property saved sustains any injury in consequence of such negligence or unskilfulness, the court will impose upon the salvors a part of the burden of the loss by diminishing their remuneration. The extent of this diminution is not measured by the amount of loss or injury sustained, but is framed upon the principle of proportioning the diminution to the degree of negligence, not to the consequences.⁷

¹ *The Dygden*, 1 Notes of Cases, 115. See also *The Neptune*, 1 W. Rob. 297-300; *The Magdalen*, 31 L. J. Adm. 22; *The Howthandel*, 1 Spinks, 25-27; *The Duke of Manchester*, 2 W. Rob. 470; *The Lockwoods*, 9 Jur. 1017; *The John Bryant*, 5 Irish Jur. 233.

² Lush. 518-528. See also *The Rosalie*, 1 Spinks, 188-191; *The Magdalen*, 31 L. J. Adm. 22.

³ 2 W. Rob. 470.

⁴ 1 W. Rob. 297.

⁵ 1 Notes of Cases, 115.

⁶ 9 Jur. 1017.

⁷ *The Cape Packet*, 3 W. Rob.

And where a steamer having got a vessel off the Goodwin Sands, where she had been aground, took her in tow, and the vessel afterwards, in consequence of the negligence of those on board the steamer, got aground upon the Sandwich Flats, the salvage claimed by the steamer was held to be entirely forfeited, upon the ground that the vessel had been led into a peril as great as that from which she had been rescued.¹

Salvors are liable for damages done to the sails of the vessel saved, by being negligently left exposed to sparks from the salving vessel.²

If, in consequence of the unskillfulness or negligence of those on board her, the salving vessel should come into collision with the vessel which she is endeavoring to assist, she will be held liable in damages as in an ordinary case of collision. Thus, where the steamer "Thetis" fell in with the steamer "Sardis," which had been disabled in consequence of an accident to her machinery, and, in endeavoring to tow her into port for an agreed sum, negligently came into collision with and sunk the disabled vessel, she was held to be solely blamable, and condemned in damages.³

If the salvors employ an agent to assist them in the undertaking, and the property saved sustains any loss in consequence of the negligence or unskillfulness of the agent, the salvors, however innocent they may be, and however meritorious as to their own acts, must still suffer for it in the diminished amount of compensation.⁴

122-125. See also *The Perla*, Swa. 230; *The Prinz Frederik*, 2 Dods. 451; *The Magdalen*, 31 L. J. N. S. Adm. 22. As to the responsibility of salvors for the negligence or misconduct of their agents, see *The Atlas*, 1 Lush. 518-527.

¹ *The Duke of Manchester* (on appeal), 5 Notes of Cases, 470.

² *The Senator*, 1 Brown Adm. & R. Cases, 372.

³ *The Thetis*, L. R. 2 Adm. 365.

⁴ Per Sir John Coleridge, *The Atlas*, Lush. 518-529. See *The Bo-*

If, however, the services of the salvor terminate before the negligent act of the third party takes place, then, as he would not under such circumstances be acting as their agent, they would not, of course, be answerable for his misconduct. Thus, where a set of salvors brought a vessel into a position of safety from ordinary peril, but not to anchor, and then gave her in charge to a licensed pilot, it was held that they were not prejudiced in their claim for salvage by injuries subsequently caused to the ship through the negligence of the pilot.¹

The question has been discussed (in America) as to how far the owner of the salving vessel is responsible for losses sustained by the property saved through the unseaworthiness of his vessel or the misconduct of his crew; and it has been held that, although the owner of an ordinary trading-vessel would not be liable for such consequences,² a different rule prevails with regard to a licensed wrecking-vessel. There the master and crew are employed by the owner for the sole purpose of assisting vessels in distress, and he is liable for any misconduct by them in the course of their employment. Whoever the salvors may be, whether licensed wreckers or not, they are not only bound to be scrupulously honest themselves, but, whilst the property is in their custody, they are expected to employ every reasonable degree of diligence to guard it from plunder by others; and any negligence in this respect will affect the amount of their remuneration.³

Salvors are under implied obligations to use good

marsund, Lush. 77; *The Duke of Manchester*, 2 W. Rob. 470. 276; *The Pacific*, 22 Am. L. R. 289.

¹ *The Bomarsund*, 1 Lush. 77.

² *The John Perkins*, 19 Am. L.

³ *The Mulhouse*, 22 Am L. R. R. 490.

faith, honesty, skill, and energy in their undertaking;¹ to land property saved at the nearest port of safety, and see that it is properly cared for.² But due regard should be paid by the salvors to the convenience of the owners in determining to what port the vessel should be taken.³

The salvors should not retain possession of the property to the detriment thereof, or the inconvenience of the master and crew.⁴

They are required to exercise the same degree of care in keeping the property placed in their custody as a prudent man ordinarily exercises in keeping his own; and negligence in this respect either diminishes the reward, or works a total forfeiture of salvage.⁵

They are bound, in good faith, to consult the interest of the owner, as well as their own.⁶

In stripping an abandoned vessel of her apparel and furniture, salvors are bound to the exercise of reasonable care.⁷

A vessel undertaking in good faith to perform the office of salvor to a derelict vessel, *held* not responsible for the latter having been wholly lost in the effort to save her.⁸

No claim for demurrage or detention of a ship under warrant of arrest issued by the unsuccessful promoters of a salvage suit can be allowed, in the absence of *mala fides* or malicious negligence.⁹

¹ The *Ida L. Howard*, 1 Low. 3; The *John Perkins*, 3 Ware, 89.

² The *Sumner's Apparel*, 1 Brown Adm. 52.

³ The *Eleanora Charlotta*, 1 Hagg. Adm. 156. And see *L'Esperance*, 1 Dods. 46.

⁴ The *Lady Worsley*, 2 Spinks Adm. 253; The *Eleanora Charlotta*, 1 Hagg. Adm. 156.

⁵ The *Mulhouse*, 12 Law Rep. π. s. 276.

⁶ The *Amethyst*, 2 Ware (Dav.), 20.

⁷ The *Sumner's Apparel*, 1 Brown Adm. 52.

⁸ The *Laura*, 14 Wall. 336; *Gilham v. The Tyler*, 3 Woods, 111. (As I was the proctor for The Tyler, I know that the name of libellant is misprinted Gilman for Gilham.)

⁹ The *Strathnaver* (Privy Council, 1875), 1 L. R. Appeal Cases, 58.

SECTION VIII.—DETENTION OF PROPERTY BY SALVORS.

It has been held at common law that, where salvage is effected on the high seas, the salvor is entitled to retain possession of the property saved until his claim has been satisfied.¹

This right of the salvor has been recognized in the court of admiralty, but to a much more limited extent, that court looking to all the circumstances of the case, and regarding the necessity that may exist for detaining the property as a means of securing the claims of the salvor as the very foundation of the right.²

It has been laid down that when once a vessel has been abandoned by her master and crew in consequence of real danger, for the purpose of saving their lives, then whatever persons get possession of that vessel and are competent to render salvage service, have a right to retain possession of her until she is either voluntarily given up, or they are divested by due course of law.³

And salvors have, under special circumstances, been considered justified in taking the vessel into port without delaying to take on board the crew which had abandoned her.⁴

And they have also, under special circumstances, been held entitled to retain possession of a vessel found derelict, though the master and crew return to her.⁵

¹ *Hartfort v. Jones*, 1 Lord Raymond, 393. See also *Nicholson v. Chapman*, 2 H. Black. 254; *The Nicolai Heinrich*, 17 Jur. 329. See also to the same effect *The Royal William*, Stewart's Vice-Adm. 111; *The Bee*, Ware, 336; *Lewis v. The Elizabeth and Jane*, Ware, 41; *The John Gilpin*, Olcott, 77; *Baker v. Hoag*, 3 Barb. S. C. Rep. 203.

² *The Glasgow Packet*, 2 W. Rob. 306, 312, 313.

³ *The Tritonia*, 5 Notes of Cases. Supp. ii. See also *The Dantzic Packet*, 3 Hagg. 883, 885.

⁴ *The Orbona*, 1 Spinks, 161, 165.

⁵ *The Gertrude*, 30 L. J. Adm. 130.

The retention of the exclusive possession and control of the vessel by the salvors, where the master and crew reappear, can, however, only be justified by necessity.¹

And the right of the salvors in this respect is one depending so entirely upon the peculiar circumstances of each case, that the court has refused to lay down any general rule upon the subject.²

If, however, the vessel be not derelict, as where, for instance, the master and crew leave her for the purpose of obtaining and returning with assistance, and without the intention of abandoning her, the occupying salvor is bound to submit himself to the orders of the master, when he appears and claims his authority. The master, under such circumstances, is entitled to resume charge of the vessel, to employ whom he pleases, and to take what measures he thinks fit for the preservation of the ship.³

As between the salvors and the owners of the salving ship, it has been held that the property saved or the remuneration awarded for it ought, until distribution, to be in the custody of the salvors, and not in that of the owners of the salving vessel.⁴

The salvors' title to remuneration and their maritime lien on the vessel is not in any way impaired or affected by their giving up possession to the owner.⁵

Lord Stowell: "It is an ill-founded and absurd notion that unless salvors stick to the ship they forfeit, or at least impair, their title to remuneration. It is very desirable that salvors generally should know that, in

¹ The *Gertrude*, 30 L. J. Adm. 180, Dr. Lushington. "It is expedient, however, where it can be done, to permit a master and crew to approach their own vessel."

² The *Cleopatra*, 37 L. J. Adm. 31. 150.

³ The *Champion*, Br. & Lush. 69-71.

⁴ The *Princess Helena*, 30 L. J. Adm. 137, 140.

⁵ The *Eleanora Charlotta*, 1 Hagg.

order to maintain their rights, it is perfectly unnecessary to remain on board the vessel which may have received their assistance.”¹

When once the salvage has been completed and the vessel brought into port, the salvors will not be justified in retaining possession for any greater length of time than may be necessary for the purpose of securing their demands against the owner. This necessity the court of admiralty regards as the very foundation of the right;² and it has even gone so far as to hold salvage to be entirely forfeited, on the ground, among others, that the salvor had improperly kept possession of the property saved, instead of delivering it up to an agent of the owner who was on the spot.³

A salvor has a qualified property in the articles saved, and he need not remain in the actual possession in order to maintain his rights.⁴

The *John Perkins*, 3 Ware, 89; *The Bee*, 1 Ware, 332; *The John Gilpin*, Olcott, 77; *A Box of Bullion*, 1 Sprague, 57; *The Missouri's Cargo*, 1 Sprague, 260; *The Amethyst*, 2 Ware (Dav.), 20; *The Maria*, Edw. Adm. 175. And see the *Brevoor v. The Fair American*, 1 Pet. Adm. 87; *Packard v. The Louisa*, 2 Woodb. & M. 48; *Hartfort v. Jones*, 1 Ld. Raym. 393; 2 Salk. 654; *Osborne v. Rogers*, 1 Saund. 264; *Baring v. Day*, 8 East, 57; *The Blenden Hall*, 1 Dods. 414; *The Charlotta*, 2 Hagg. Adm. 361; *The Eugene*, 3 Hagg. Adm. 156; *The Effort*, 3 Hagg. Adm. 165; *The Queen Mab*, 3 Hagg. Adm. 242; *Seaman v. Erie R. R. Co.*, 2 Ben. 132; *The Emblem*, 2 Ware (Dav.), 61.

¹ See *The H. D. Bacon*, Newb. 274; *The Emblem*, Daveis, 61.

² *The Glasgow Packet*, 2 W. Rob. 306.

³ *The Lady Worsley*, 2 Spinks, 253. See also *The Towan*, 8 Jur. 220.

⁴ *Eads v. The H. D. Bacon*, Newb. 274.

The salvors may retain possession of the goods saved until the proper compensation is made for their trouble.¹

So as to salvors of goods cast away.²

If the salvor surrenders the property to the owner, to the extent of its value he may hold the owner personally for a proper salvage compensation.³

The lien for salvage takes precedence of prior maritime liens,⁴ and against a claim for general average arising from jettison.⁵

Where services are rendered in getting a vessel off a reef, in the distribution of the proceeds they are entitled to a priority over a claim for general average from a jettison, although one of the salvors had the promise of a third party to pay him.⁶

The finder becomes the legal possessor, and his claim takes precedence of all other titles.⁷

So possession taken of an abandoned vessel gives the right to retain it till salvage completed, as against all others.⁸

They cannot be divested of their interest until adjudication;⁹ and there is no difference in principle before and after property is brought to a place of safety.¹⁰

¹ *Hartfort v. Jones*, 1 Ld. Raym. 393; *Baring v. Day*, 8 East, 57; *The Glasgow Packet*, 8 Jur. 675; *The Towan*, 8 Jur. 222; *Clark v. Chamberlain*, 2 Mees. & W. 78.

² *Hartfort v. Jones*, 1 Ld. Raym. 363; 2 Salk. 658; *Clayton v. The Harmony*, 1 Pet. Adm. 74.

³ *Seaman v. Erie R. R. Co.*, 2 Ben. 132; *The Emblem*, 2 Ware (Dav.), 61.

⁴ *Barney v. Eaton*, 1 Biss. 242.

⁵ *The Spaulding*, 1 Brown Adm. 310.

⁶ *The Spaulding*, 1 Brown Adm. 310.

⁷ *The John Wurts*, Olcott, 470; *Lewis v. The Elizabeth and Jane*, 1 Ware, 41; *Wilkie v. The St. Petre*, Bee, 83.

⁸ *The John Gilpin*, Olcott, 81; *The Maria*, Edw. Adm. 175; *The Eugene*, 3 Hagg. Adm. 156; *The Queen Mab*, 3 Hagg. Adm. 242; *The Dantzic Packet*, 3 Hagg. Adm. 383; *The Effort*, 3 Hagg. Adm. 165; *Hand v. The Elvira*, Gilp. 60.

⁹ *The Nicolai Heinrich*, 22 Eng. L. & Eq. 615.

¹⁰ *The Missouri's Cargo*, 1 Sprague, 270, distinguishing *The Boston*, 1 Sumn. 328.

After a vessel has been brought into port by salvors, her owners have no right to take her to another port without the consent of the salvors.¹

A salvage service in raising and preserving a steamer has a priority of lien over claims for wages earned and supplies furnished before the accident.²

The agreement to pay salvage creates a valid lien,³ but prior lien-holders are not concluded as to the amount of compensation agreed on.⁴

The fact that a salvor is also a mortgagee of the salvaged vessel does not deprive him of his preferred claim to salvage.⁵

By the State statute of California, April 10, 1850, concerning wrecks, the title to wrecked property, whether a wreck in the technical sense of the term, or *flotsam*, *jetsam*, or *hagan*, or abandoned in a tempest with no buoy attached, is not divested out of the true owner, nor will the sinking and abandonment of a vessel divest the owners of title.⁶

The rights of salvors are not lost by a temporary leaving;⁷ so, if relieved by other salvors they do not lose their rights.⁸

The question will always resolve itself into a consideration of circumstances attending each particular case.⁹

¹ *The Blenden Hall*, 1 Dods. 414; *The Elizabeth and Jane*, 1 Ware, 44; *The Aquila*, 1 C. Rob. 32.

² *Collins v. The Fort Wayne*, 1 Bond, 484; *The Neptune*, 1 Hagg. Adm. 227; *Jones v. The Massasoit*, 7 Law Rep. 522.

³ *The Williams*, 1 Brown Adm. 216; *The Emulous*, 1 Sumn. 207; *The Centurion*, 1 Ware, 477; *Bearse v. Pigs of Copper*, 1 Story, 314.

⁴ *Collins v. The Fort Wayne*, 1 Bond, 476.

⁵ *The Bee*, 1 Ware, 332; *Harley v. Gawley*, 2 Sawyer, 10; *Lewis v.*

⁶ *Harley v. Gawley*, 2 Sawyer, 7; *Baker v. Hoag*, 7 N. Y. 555; *Hamilton v. Davis*, 5 Barr, 2782.

⁷ *The Amethyst*, 2 Ware (Dav.), 20.

⁸ *The Henry Ewbank*, 1 Sumn. 400; *The Amethyst*, 2 Ware (Dav.), 20; *The Eugene*, 3 Hagg. Adm. 156; *The Effort*, 3 Hagg. Adm. 165; *The Blenden Hall*, 1 Dods. 414.

⁹ *The Salacia*, 2 Hagg. Adm. 262.

Whoever first obtains possession of a lost anchor may hold it till his salvage is paid.¹

A ship was libelled for salvage, and a decree for salvage rendered. The sureties for the claimants, the owners, were compelled to pay the salvage decree. *Held*, that they were not entitled to priority, for the sum so paid, over valid mortgages which antedated the salvage services.²

Lien. — Where a salvage service is actually rendered in a case like the present, there is no doubt the lien thereby created extends to the entire time employed, including going and returning.³

The going to the ship is a part of the service, as much as the labor after arrival.⁴

Subsequent salvage, when it is of a meritorious kind, takes precedence of antecedent wages.⁵

The suitor in salvage is highly favored by the law, on the assumption that, without his assistance, the *res* might have been wholly lost. Salvage is privileged before the original or prior wages of the ship's crew, on the ground that they are saved to them as much as or *eadem ratione qua* the ship and cargo are saved to their owners.⁶

In the case of *The Bark Penelope*,⁷ it was held that a salvor has no right or authority, after the vessel has been brought into port, to provide supplies, so as to charge the owner, or create a lien upon the vessel.

¹ *One Anchor and Chain*, 2 Low. L. R. 465; *The Susan*, 1 Sprague, 550.

² *Roberts v. The Huntsville*, 3 Woods, 386.

³ *The Williams*, Brown Adm. & R. R. 210; *The Independence*, 2 Curt. 350.

⁴ *The Graces*, 2 W. Rob. 294. And see *The White Star*, 1 L. R. Adm. & Eq. 68; *The Banner*, 14

⁵ *Coote's Practice*, 2d ed., London, 1869, p. 136.

⁶ *Selina*, 2 Notes of Cases, 18, 19; *Sabina*, 7 Jur. 182; *The Friends*, 4 C. Rob. 145.

⁷ U. S. District Court, District of South Carolina, Magrath, J. (not reported).

The French law of salvage has little analogy with the English or American.

It is founded on "*Lois, ordonnances, déclarations, règlements, arrêts du Conseil d'Etat, et autres documents législatifs.*"

The curious who desire to examine it I refer to "Code Maritime, par A. Beaussant. Paris, 1840." Tome ii. pp. 97-160, 547-549, 629, 639, 641, 642.

CHAPTER III.

LIENS OTHER THAN SALVORS'.

SECTION I.—CUSTOM-HOUSE DUTIES.

IN the case of *Tucker et al. v. The Bark Mary C. Porter and Cargo*,¹ it was held that duties, in the order of payment, constitute a prior debt; they belong to the government; are regarded as the claim made by the supreme authority of a nation.

Held, also, that duties are not possessed of any peculiarity distinct from other liens, making it necessary for the court to deduct them, and consider the balance only as representing the property saved.

In the case of *The Jubilee*,² the sale was ordered free of duties. But see note 1 to *The Waterloo*, 1 Blatchf. & How. 128.

In *The Concord*,³ it is declared that "goods brought by superior force into the United States are not deemed to be so imported in the sense of the law, as necessarily to attach the right to duties."

SECTION II.—ADMIRALTY LIENS.

The maritime lien is adopted from the civil law, and imports a tacit hypothecation of the subject of that lien.⁴

¹ U. S. District Court, District of South Carolina, Magrath, J. (not reported).

² 8 Hagg. 43.

³ 9 Cranch, 337.

⁴ *Vandewater v. Mills*, 19 How. 90.

It is a *jus in re* without possession, or any right of possession,¹ accompanies property into the hands of a *bona fide* holder,² and can be executed or divested only by a proceeding *in rem*.³

Maritime liens are *stricti juris*, and not to be extended by implication or construction.⁴

A general maritime lien can only exist on movable things engaged in navigation, or things the subject of commerce on the high seas, or on navigable waters.⁵

The liability of the ship and responsibility of the owners are convertible terms.⁶

It attaches on the order of the owners, made expressly on the credit of the vessel.⁷

All maritime liens extend equally to the proceeds arising from the sale of the vessel, and are to be satisfied out of them;⁸ having once attached, it follows proceeds into the hands of assignees.⁹

A charter-party gives no maritime lien on the vessel, unless cargo is laden under it.¹⁰

The owner of a vessel injured by a collision has no lien or claim upon the insurance received by her owner.¹¹

No lien exists upon a vessel for the premium for its insurance by the owners for their own benefit.¹²

The master, in a foreign port, may bind the owners

¹ Vandewater v. Mills, 19 How. 82.

² Vandewater v. Mills, 19 How. 82; The Feronia, Law Rep. 2 Adm. & E. 65.

³ Vandewater v. Mills, 19 How. 82.

⁴ Thomas et al. v. Osborn, 19 How. 22.

⁵ The Rock Island Bridge, 6 Wall. 213.

⁶ Freeman v. Buckingham, 18 How. 189.

⁷ The Kalorama, 10 Wall. 217.

⁸ The Siren, 7 Wall. 152.

⁹ Cutler v. Rae, 7 How. 729.

¹⁰ The Asa Eldridge, 8 Fed. Rep. 720; Vandewater v. Mills, 19 How. 82.

¹¹ The Peshtigo, 9 Cent. Law Jour. 285.

¹² 6 Cent. Law Jour. 261; The John T. Moore, 7 Ins. L. J. 207.

for repairs and supplies, or pledge the credit of the vessel for advances,¹ though he be owner and charterer *pro hac vice*.²

Only those acts of the master performed within the scope of his authority create a lien on the vessel;³ and all contracts within the scope of his authority, and those only, create liens,⁴ in any other than the home port of the vessel.⁵

All liens are based on necessity,⁶ and proof of necessity is essential.⁷

A real or apparent necessity must exist at the time, not only for the supplies, but for the giving of credit to the vessel.⁸

Necessity is to be governed by the circumstances of each case;⁹ the fact that a vessel is not in her home port, in the absence of other circumstances, makes a case of apparent necessity;¹⁰ so, where the master appeared not to have funds, and the owners appeared not to have personal credit.¹¹

Reasonable diligence is required of merchants to ascertain if repairs and supplies are necessary.¹²

The creditor must show not only necessity, or an apparent necessity, for the supplies or advances, but also a necessity for credit to the vessel.¹³

That the supplies were ordered by the master is a

¹ Thomas *et al.* v. Osborn, 19 How. 22.

² Andrews v. Wall, 3 How. 568.

³ The Waldo, 2 Ware (Dav.), 161.

⁴ The Camanche, 8 Wall. 494.

⁵ Leland v. The Medora, 3 Woodb. & M. 92.

⁶ Thomas *et al.* v. Osborn, 19 How. 22.

⁷ Pratt v. Reed, 19 How. 359; The Grapeshot, 19 Wall. 129.

⁸ Thomas *et al.* v. Osborn, 19 How. 22; Pratt v. Reed, 19 How. 359.

⁹ The Neversink, 5 Blatchf. 539.

¹⁰ The Steamboat Washington Irving, 2 Ben. 318.

¹¹ The Grapeshot, 9 Wall. 129; The Lulu, 10 Wall. 192; The Kalorama, 10 Wall. 204.

¹² The Lulu, 10 Wall. 201.

¹³ Pratt v. Reed, 19 How. 361; Thomas *et al.* v. Osborn, 19 How. 22; The Neversink, 5 Blatchf. 540.

presumption that they were properly furnished on the credit of the vessel.¹

It is sufficient to prove that the necessities were ordered, and were in their nature generally necessary.²

Whatever is fit and proper, and whatever a prudent owner would have ordered, if present, is within the meaning of the word "necessaries."³

In case of extreme necessity, the presence of the owner will not affect the validity of the lien.⁴

Under the general maritime law, the implied lien attaches only on foreign vessels.⁵

The actual residence of the owner furnishes the test of the character of a vessel as foreign or domestic.⁶

The general maritime lien does not attach to vessels engaged in internal commerce,⁷ but only to vessels in a foreign port;⁸ and for this purpose the States are deemed foreign to each other.⁹

The maritime lien does not attach on a contract made on land, and to do work within the body of the county.¹⁰

SECTION III. — LIEN OF MATERIAL-MEN.

Material-men have a threefold security, — the master, the owners, and the vessel.¹¹

¹ *The Kalorama*, 10 Wall. 204; *The Lulu*, 10 Wall. 192.

² *Stroder v. The Collier*, 2 Pittsb. Rep. 304.

³ *The Grapeshot*, 9 Wall. 129; *The Gustavia*, Blatchf. & H. 191.

⁴ *The Grapeshot*, 9 Wall. 129; *The Guy*, 9 Wall. 758; *The Lulu*, 10 Wall. 192; *The Kalorama*, 10 Wall. 214.

⁵ *Thomas et al. v. Osborn*, 19 How. 22; *The Stephen Allen*, Blatchf. & H. 181; *Ramsay v. Allegre*, 12 Wheat. 611.

⁶ *McAllister v. The Sam Kirkman*, 1 Bond, 369.

⁷ *Raymond v. The Ellen Stewart*, 5 McLean, 269.

⁸ *The Stephen Allen*, Blatchf. & H. 178; *The Aurora*, 1 Wheat. 96; *New Jersey Steam Navigation Company v. Merchants' Bank*, 6 How. 391.

⁹ *The Belfast*, 7 Wall. 624; *The Kalorama*, 10 Wall. 212; *Levering v. Bank of Columbia*, 1 Cranch C. C. 152.

¹⁰ *Phillips v. The Thomas Scatgood*, Gilp. 7.

¹¹ *The Chusan*, 2 Story, 468.

The general maritime law gives a lien for necessary repairs and supplies furnished to a foreign vessel,¹ unless it appears that the lien was waived,² or unless it can be inferred that the master has money, or the owner credit.³

All that is necessary to create the lien is that the supplies be actually furnished.⁴

The general maritime lien does not attach in favor of material-men for supplies furnished to a vessel at her home port,⁵ even if the vessel be engaged in foreign commerce.⁶

Where the supplies are furnished under circumstances showing an intent to trust to the personal credit of the master, owner, or other persons interested, no lien arises.⁷

A contract for necessary repairs to a vessel in a foreign port creates a lien under the maritime law,⁸ notwithstanding the owner was present, if done on the credit of the vessel;⁹ but necessity for the repairs and for credit must be shown.¹⁰

The master is bound to apply moneys in his hands towards the repairs before he can hypothecate.¹¹

Necessity for credit is proved where such circumstances of exigency are shown as would induce a prudent owner to order the repairs.¹²

¹ The *St. Jago de Cuba*, 9 Wheat. 409. *Zane v. The President*, 4 Wash. C. C. 453.

² The *Stephen Allen*, Blatchf. & H. 181; The *Grapeshot*, 9 Wall. 129, distinguishing The *Eledona*, 2 Ben. 81; s. c. 10 Blatchf. 512.

³ The *Patapsco*, 13 Wall. 329.

⁴ The *Carbaga*, 3 Blatchf. 75.

⁵ The *Mary Bell*, 1 Sawyer, 135.

⁶ The *Edith*, 11 Am. Law Reg. 214; The *Circassian*, 12 Am. Law Reg. 294; 5 Am. L. T. 482.

⁷ The *Sea Flower*, 1 Blatchf. 861:

⁸ The *Aurora*, 1 Wheat. 96; *Phelps v. The Camilla*, Taney, 400.

⁹ The *Kalorama*, 10 Wall. 204; The *Custer*, 10 Wall. 215.

¹⁰ The *James Guy*, 5 Blatchf. 496; s. c. 1 Ben. 112; The *Grapeshot*, 9 Wall. 129.

¹¹ The *Packet*, 3 Mason, 255.

¹² The *Grapeshot*, 9 Wall. 129; The *Lulu*, 10 Wall. 203.

Contracts for repairs to be made at the wharf are maritime.¹

The supplies must appear to be reasonable, or the money advanced for them to have been wanting; and there must be nothing to repel the ordinary presumption that the master acted under the authority of the owners.²

It is no objection that the owner was present when the supplies were furnished in a foreign port,³ or that he gave directions in person,⁴ if the undertaking was that they were to be on the credit of the vessel.⁵

But, where the repairs and supplies were furnished at the request of the owner, they were presumed to be furnished on his credit.⁶

The services must be maritime to secure the lien.⁷

Under the common law a ship-carpenter or a shipwright has no lien for repairs after the vessel has passed out of his possession, on a contract made on land, at the place of the owner's residence.⁸

Stevedores have a lien on the vessel for wages;⁹ but there are decisions opposed to the right to proceed *in rem* for this class of service.

A stevedore has no maritime lien for services in loading and storing cargo.¹⁰ In *Flanagan v. Ship Queen of the East*,¹¹ Judge Pardee, Circuit Judge, said:—

¹ *Ex parte Easton*, 95 U. S. 75.

² *The Fortitude*, 3 Sumn. 247.

³ *The Kalorama*, 10 Wall. 204; *The Custer*, 10 Wall. 215.

⁴ *The Grapeshot*, 9 Wall. 129; *The Lulu*, 10 Wall. 192; *The Kalorama*, 10 Wall. 208; *The Guy*, 9 Wall. 578, distinguishing *Thomas et al. v. Osborn*, 19 How. 22; *Pratt v. Reed*, 19 How. 359.

⁵ *The Kalorama*, 10 Wall. 204.

⁶ *The Mary Bell*, 1 Sawyer, 139; *Thomas et al. v. Osborn*, 19 How. 22.

⁷ *Packard v. The Louisa*, 2 Woodb. & M. 53; *Flaherty v. Doane*, 1 Low. 150.

⁸ *The General Smith*, 4 Wheat. 438; *The Marion*, 1 Story, 68; s. c. 3 Law Rep. 250.

⁹ *McCarty v. Schooner Senator*, 1 Flipp. 609.

¹⁰ *The Amstrel, Blatchf. & H.* 217; *McDermott v. The S. Gowens*, 1 Wall. Jr. 370.

¹¹ Eastern District of Louisiana, May, 1882 (unreported).

This court has held that an unexecuted contract for towage made by the ship's agent in port gave no lien. See case of *The Prince Leopold*, reported 9 Federal Reporter, p. 333. In that case there was no performance, nor even tender of performance.

In the case now under consideration there was part performance, and, as is shown by the evidence, the towage contract was one towage from sea to sea. The contract must be treated as a whole, and as there was performance, the contract for towage cannot be said to be unexecuted. The libellants have a lien for the full amount due them.

The law creates no lien on a vessel as security for the performance of a contract to transport cargo, until some lawful contract of affreightment is made and a cargo shipped under it.¹

The maritime privilege or lien is *stricti juris*, and cannot be extended by construction, analogy, or inference.²

When the execution of a charter-party has never been begun, damages cannot be enforced *in rem*.³

Analogy, says Pardessus,⁴ cannot afford a decisive argument, because privileges are of *strict right*, &c.

These principles will be found stated, and fully vindicated by authority, in the cases of *The Young Mechanic*⁵ and *The Kiersage*.⁶ See also *Harner v. Bell*.⁷

It is not material whether the hypothecation is made directly to the furnishers of repairs and supplies, or to one who advances money on the credit of the vessel, to pay therefor in a case of necessity.⁸

¹ *The Schooner Freeman v. Buckingham*, 18 How. 188; *Vandewater v. Mills*, Claimant Steamship Yankee Blade, 18 How. 91; *The Monte*, 19 Fed. Rep. 331 (1882).

² *Vandewater v. Mills*, *ut supra*.

³ *The Tories v. The Winged Races*, 39 Hunt's Merchants' Mag. 458; *Vandewater v. Mills*, 18 How. 82.

⁴ *Droit Civil*, vol. iii. p. 897.

⁵ 2 Curtis, 404.

⁶ 2 Curtis, 421.

⁷ 22 Eng. L. & Eq. 62.

⁸ *The Grapeshot*, 9 Wall. 130; *The Lulu*, 10 Wall. 192; *The Emily B. Souder*, 3 Ben. 159; s. c. 8 Blatchf. 337; *The Kalorama*, 10 Wall. 204; *The Gustavia*, Blatchf. & H. 189.

The lender of money, in a foreign port, has a lien for his advances made for the payment of necessary expenses,¹ whenever it would attach for the necessities themselves;² and necessities include money.³

Borrowed money is to be placed on the same footing as the purpose for which it is borrowed. Where the latter is of a maritime character, and has a lien attached thereto, whether by the general or the local law, the money advanced to meet it has an equal dignity.⁴

If the lender has acted in good faith, and without any knowledge or suspicion of the existence of funds or personal credit, or could not, upon reasonable inquiry, acquire knowledge thereof, the owner is bound, notwithstanding they existed or might have been obtained.⁵

The lien for advances for necessities takes priority over existing mortgages to creditors at the home port.⁶

In the case of *The Athenian*,⁷ Brown, D. J., said : —

The case being one of salvage, libellants are entitled to be paid first, even before the seamen whose wages were earned prior to these services, since it is owing to their exertions that anything remains to which the lien of the seamen can attach. (*The Selina*, 2 Notes of Cases, 18; *The Mary Ann*, 9 Jur. 94; *The Panthea*, 1 Asp. Mar. Law Cases, 133.) The commissioners will amend the report by classifying the claims as follows : 1. Salvage services ; 2. Seamen's wages ; 3. Claims of tugs and material-men, those of a later year ranking those of a former ; 4. Domestic claims. (See *Dalstrom v. Schooner E. M. Davidson*, 1 Fed. Rep. 259; *Marrion Blacksmith &*

¹ *Wainwright v. Crawford*, 17 How. 477; *The Emily B. Souder*, 17 Wall. 686; *The Neversink*, 5 Blatchf. 539.

² *The Lulu*, 10 Wall. 192.

³ *Insurance Co. v. Baring*, 20 Wall. 163; *Minten v. Maynard*, 17 How. 477; *Tod v. The Sultana*, 19 How. 362.

⁴ *The Guiding Star*, 9 Fed. Rep. 521.

⁵ *Carrington v. Pratt*, 18 How. 63; *Thomas et al. v. Osborn*, 19 How. 226.

⁶ *The Emily B. Souder*, 17 Wall. 686.

⁷ *The Athenian*, 3 Fed. Rep. 248.

Wrecking Co. v. Steamboat H. C. Yeager, 1 Fed. Rep. 285 ;
Mayo v. Clark, 1 Fed. Rep. 735.)

For the order in which claims are paid, see also *The City of Tawas*.¹

SECTION IV. — PRIORITY OF LIENS.

Privileged liens are matters of strict right, not to be extended by construction to cases not within the law which confers them.²

The order of distribution or *marshalling* the proceeds is settled by the court, according to the legal priority ; although the court sometimes refers it to the clerk to report the claims and the order of preferences. In claims of the same rank, the one first commencing his proceedings is preferred in the distribution. The party first seizing holds the property against all other claims of no higher character. Debts holding a higher rank are paid in full, to the exclusion of those of lower rank. To the report of the clerk exceptions may be taken, and the court decides to maintain, amend, reject, or re-refer the report.

The seamen's lien for wages is postponed only to that of libellants in a case of collision under the law of retaliation.³ The lien for salvage takes preference of prior maritime liens.

The lien for supplies should be preferred to the claim of forfeiture to the government, where the parties were innocent of any knowledge of the illegality of the voyage.⁴

In the case of *The Lillie Laurie*,⁵ it was held that

¹ 3 Fed. Rep. 170.

² *The Enterprise*, 1 Low. 455.

³ *Vandewater v. Mills*, 19 How.

⁴ *The St. Jago de Cuba*, 9 Wheat.

82; *Thomas et al. v. Osborn*, 19 How. 409.

⁵ *Pratt v. Reed*, 19 How. 359;

Tod et al. v. The Sultana, 19 How. 362.

⁵ *The Lillie Laurie*, Circuit Court, Eastern District of Texas, Dec. 3, 1880, Woods, Circuit Judge.

the claim for salvage was entitled to priority of payment over the claims of mortgages, whether the same were registered before or after the origin of the salvor's claim.

In the case of *The Lillie Laurie*,¹ it was held that the salvor's claim was entitled to priority of payment over debts contracted subsequent to the date of his claim for supplies furnished in the home port, and which are made a lien upon the vessel only by State law.

They must be enforced within a reasonable time, or they will not avail against a *bona fide* purchaser without notice.²

There must be something more than mere lapse of time: it must be unreasonable neglect and delay, operating to the injury of third persons.³

The general maritime lien may be waived by any act inconsistent with its continuance.⁴

The lien is not extinguished by acceptance of a note, unless the contract was to accept the less security for the greater.⁵

SECTION V. — LIENS ON DOMESTIC VESSELS.

Under the general maritime law a lien on a domestic vessel is not implied,⁶ no lien attaching without a special statute.⁷

¹ United States Circuit Court, 446; *The Hunter*, 1 Ware, 249; Eastern District of Texas, Woods, De Wolf v. Howland, 2 Paine, 364. Circuit Judge, Dec. 3, 1880.

² *The General Jackson*, 1 472; *The Belfast*, 7 Wall. 624; *The Sprague*, 554; s. c. 7 Law Rep. n. s. Edith, 5 Ben. 436; s. c. 11 Blatchf. 324. 451.

³ *The Prospect*, 3 Blatchf. 526.

⁴ *The Ann C. Pratt*, 1 Curt. 348.

⁵ *The Augusta*, 1 Dods. 283,

⁷ *Leon v. Galceran*, 10 Wall.

192; *Edwards v. Elliot*, 21 Wall.

556; *The Globe*, 2 Blatchf. 427.

State legislatures have power to create liens on domestic vessels, founded on maritime contracts;¹ but they cannot provide for their enforcement *in rem*,² or give any other than a common-law remedy;³ and, if the statute should provide for its enforcement *in rem*, such provision would be unconstitutional and void.⁴

The lien of a pilot, conferred by State laws, is enforceable in admiralty.⁵

Although a State statute cannot confer jurisdiction on a federal court, it may yet give a right, to which, other things allowing, it may give effect.⁶

The lien for towage services, given by State statute, is enforceable in admiralty.⁷

The doctrine on this point is changeable. See 12 Admiralty Rule, as explained in *The St. Lawrence*.⁸

SECTION VI. — LIEN OF BUILDERS.

A contract for building a ship, or for supplying materials for her construction, is not a maritime contract creating a lien under the general maritime law.⁹

The builder has a common lien, or right of possession, to finish the vessel, and earn the full price;¹⁰ but

¹ *The Belfast*, 7 Wall. 634; *The Wardens*, 6 Wall. 84; *Ex parte William and Emmeline, Blatchf. & McNeil*, 13 Wall. 241. H. 69.

² *The Belfast*, 7 Wall. 644; *The Globe*, 2 Blatchf. 427.

³ *The Globe*, 2 Blatchf. 427; *The Kalorama*, 10 Wall. 204; *The Belfast*, 7 Wall. 625.

⁴ *The Edith*, 10 Blatchf. 466; 11 Am. Law Reg. 214; *Leon v. Galceran*, 11 Wall. 185; *The Belfast*, 7 Wall. 624.

⁵ *Steamship Co. v. Joliffe*, 2 Wall. 450; *Steamship Co. v. Port*

⁶ *Ex parte McNeil*, 13 Wall.

236.

⁷ *The Belfast*, 7 Wall. 624; *People's Ferry Co. v. Beers*, 20 How. 402.

⁸ 1 Black, 522.

⁹ *People's Ferry Co. v. Beers*, 20 How. 400; *Roche v. Chapman*, 22 How. 129; *The Grapeshot*, 9 Wall. 130.

¹⁰ *The Kalorama*, 10 Wall. 211.

this lien is lost on surrendering possession,¹ or by a voluntary release of possession.²

The liens under the common law do not attach without possession.³

Contracts for building and furnishing materials for building vessels are in their nature maritime; and State statutes may create liens which will be enforceable in admiralty.⁴

SECTION VII.—LIEN FOR WHARFAGE.

As against a foreign vessel a lien attaches for wharfage, which is enforceable in admiralty *in rem*, or by a libel *in personam* against the owner.⁵

Ancient codes usually treat such contracts as maritime, for which the ship or vessel is liable.⁶ Such charges constitute a lien;⁷ they are the subjects of admiralty jurisdiction.⁸

SECTION VIII.—LIEN FOR WAGES.

See SEAMEN, Chapter V., Section IV.

SECTION IX.—DIVESTMENT OF LIENS.

When the ship is lawfully sold, the purchaser takes an absolute title divested of all liens, and the liens are transferred to the proceeds.⁹

¹ The *Alida*, Abb. Adm. 171; Blatchf. 466; *Calkin v. United Cunningham v. Hall*, 1 Cliff. 48; States, 3 Ct. Cl. 297; The *Harrison*, Meany v. Head, 1 Mass. 319. 2 Abb. (U. S.) 74.

² The *Kalorama*, 10 Wall. 204, ⁵ *Ex parte Easton*, 95 U. S. 68. denying The *Zodiac*, 1 Hagg. Adm. 320. ⁶ *Maggie Hammond*, 9 Wall. 435; *Ex parte Easton*, 95 U. S. 76.

³ The *Kalorama*, 10 Wall. 204; ⁷ *Ex parte Easton*, 95 U. S. 76. *Westerdell v. Dale*, 7 Term Rep. 306. ⁸ *Ibid*.

⁴ The *Kalorama*, 10 Wall. 204; ⁹ The *Amelie*, 6 Wall. 30; Hill v. The *Golden Gate*, 6 Am. Law Surp. and Rem. of The *Edith*, 11 Reg. 173.

In the case of *The Trenton*,¹ under the heading "Admiralty Sales — Liens," it is said that by the laws of most, if not all, civilized nations the sale of a vessel by proceedings *in rem*, in a court of competent jurisdiction, extinguishes all liens upon her, and vests a clear and indefeasible title in the purchaser.

This is not the law of England and America alone. The Commercial Code of France contains similar provisions regarding the judicial sale of ships.

Article 193: In commenting upon this article, Du-four observes (2 *Droit Maritime*, 47): "Moreover, the sale upon seizure has always had the effect, in our law, of purging the incumbrances with which the property was charged." "The decree clears all liens," said Loysel, p. 53.

Article 766 of the German Mercantile Code expressly provides that the lien of ships' creditors upon the vessel becomes void by a compulsory sale of the vessel in a home port; the purchase-money takes the place of the ship, as regards the ship's creditors. The ship's creditors must be publicly summoned to protect their rights. In other respects, the provisions regulating the proceedings for a sale are reserved to the laws of the various countries.

The six hundredth article of the Spanish Code is equally explicit. Similar provisions are found in article 1398 of the Portuguese, article 193 of the Belgian, article 290 of the Italian, article 840 of the Chilian, and article 477 of the Brazilian Code.

The Master. — The ship is, by the general maritime law, held responsible for the torts and misconduct of the master and crew.²

¹ 4 Fed. Rep. 657.

² *United States v. Brig Malek Adel*, 2 How. 234.

The master may maintain an action in the admiralty *in personam*, but not *in rem*, for his wages.¹

The master of a vessel has no lien in admiralty for his wages.²

A lien for *lockage* will not arise where the services were rendered to the vessel in her home port.³

A claim for *lockage* in a public navigable river is cognizable by a court of admiralty.⁴

In *The Young Mechanic*,⁵ Judge Curtis remarking, what must have struck every one whose duties require him to consider it, "that though the nature of admiralty liens has doubtless long been understood, it does not seem to have been described with fulness or precision in England or in this country." He then enters upon an examination of it, and illustrates it in a manner well worthy of attention. He distinguishes it from an equitable lien, and adopts the definition by Pothier of an hypothecation, as an accurate description of a maritime lien under our law, "the right which a creditor has in a thing of another, which right consists in the power to cause that thing to be sold in order to have the debt paid out of the price."

In the case of *Mordecai & Co. v. The Schooner Mary Eddy and Owners*,⁶ the able and learned judge cites the foregoing, and says that the maritime lien in general gives no right to the creditor to take possession; that is executed by the suit *in rem*.

Upon the arrival of the ship, if the loan is not repaid within the time prescribed, proceedings may be

¹ *Hammond v. Insurance Co.*, 4 Mason, 196.

⁴ *Ibid.*

⁵ 2 Curt. C. C. 404.

² *The Short Cup*, 6 Fed. Rep. 630.

⁶ U. S. Dist. Court, Dist. of South Carolina, *Magrath, J.* (not reported).

³ *Monongahela Nav. Co. v. Tug Bob Connell*, 1 Fed. Rep. 218.

taken in the court of admiralty, and the ship may be arrested.¹

A shipping broker has no lien on a vessel in admiralty for services in procuring a charter-party.²

For "Some Features of Maritime Liens," see an essay by Frank Goodwin, 16 Am. Law Rev. 193 (March, 1882); and see note by Orlando F. Bump, 10 Fed. Rep. 489.

A maritime lien is not essential to give the courts of the United States admiralty jurisdiction.³

Such jurisdiction attaches on breach of a maritime contract.⁴

Under the doctrine of *stare decisis*, "the lien of a mortgage on a vessel duly recorded according to section 4192 of the Revised Statutes is inferior to all strictly maritime liens, but is superior to any subsequent lien for supplies furnished in the home port, given by State legislation."⁵

Where, in the admiralty, two claims are made upon the fund in the registry of the court, one arising from a mortgage given at a foreign port, and entered upon the vessel's register, for outfit and supplies for the voyage, and the other upon a bill of lading executed by the master for the voyage, for specie received on board and never delivered: *held*, that the latter has priority over the former in the distribution of the fund.⁶

¹ Abbott's Law of Merchant Ships and Seamen, 115 (12th ed., London, 1881, by S. Prentice, Q.C.).

² The Thames, Dec. 23, 1881, Fed. Rep. April 11, 1882; 16 Am. Law Rev. 484.

³ Maury & Co. v. Culliford & Clark, 10 Fed. Rep. 388, by Pardee, C. J., Dec. 23, 1881.

⁴ Ibid.

⁵ The Josephine Spangler (The De Swet, 10 Fed. Rep. 483, followed), 11 Fed. Rep. 440, by Pardee, Ct. J.

⁶ Justi Pon and Others v. Brig Arbustci, Am. Law Reg. vol. vi. No. 8, p. 511; same point, Brown, 204.

The mortgagee of a vessel sunk by a collision is entitled, for the protection of his mortgage interest, to come in on petition as co-libellant in a libel filed by the owners against the offending vessel.¹

For competing liens, see further, Maclachlan's treatise on the Law of Merchant Shipping, pp. 651-657 (2d ed., London, 1875).

By the general maritime law there attaches upon a wrong-doing vessel and her freight a maritime lien to the full extent of the damage done.²

The maritime lien for damage by collision attaches to the ship and all her appurtenances, to the freight which has actually accrued due, and to subsequent accretions in the value of the ship arising from repairs done after the period when the damage was occasioned, when such repairs were done by the owner at his own expense.³

A libel *in rem* cannot be maintained for services in navigating a raft of logs.⁴

Upon general principles the services of a stevedore are maritime in their character, and, when performed for a foreign ship, he has a lien thereon for the value thereof.⁵

A vessel is in a foreign port, in the sense of the maritime law, when she is in a port without the State where she belongs and her owner resides.⁶

The port in which the owner of a vessel resides is her home port, although she has a foreign registry, and sails under a foreign flag.⁷

¹ The Grand Republic, 10 Fed. Rep. 398 (Jan. 28, 1882).

² Maude & Pollock's Law of Merchant Shipping, vol. i. p. 619 (4th ed., London, 1881).

³ Kay's Law relating to Shipmaster and Seamen, vol. ii. p. 917 (London, 1875).

⁴ A Raft of Cypress Logs, 1 Flip-pin, 543.

⁵ The Canada, 7 Fed. Rep. 119.

⁶ Ibid.

⁷ The Brig E. A. Barnard, 3 Fed. Rep. 712 (June 4, 1880), reported by Frank P. Prichard, of the Philadelphia Bar.

The services of a stevedore in loading a vessel in her home port do not create a maritime lien.¹

Contra, a stevedore has a lien upon a foreign vessel for his services, rendered at the request of the master in a case in which the vessel is to stow the cargo.²

The services of a watchman and ship-keeper, rendered while the vessel is in port, do not create a maritime lien.³

The ship-keeper of a domestic vessel cannot sue even *in personam* in the admiralty.⁴

The present rules and the decisions of the Supreme Court create no distinction between the liens on a domestic vessel, given by the local law, and liens under the general maritime law.⁵

The owner of a cargo has no lien upon the vessel for the breach of a contract of affreightment, until the cargo, or some portion, has been laden on board or delivered to the master.⁶

In order that a ship-owner may retain a lien on the cargo for freight, it should not be delivered to the consignee. This rule is not absolute; but, in the case of an understanding between the parties that the lien may remain, the cargo may be delivered.⁷

¹ The Brig E. A. Barnard, 3 Fed. Rep. 712 (June 4, 1880), reported by Frank P. Prichard, of the Philadelphia Bar. And see The Arnstel, Blatchf. & H. 215; The Bark Joseph Cunard, Olcott, 123; Cox v. Murray, 1 Abb. Adm. 341; The S. G. Owens, 1 Wall. Jr. 370; Phillips v. The Sattergood, Gilpin, 3; The Bark Ilex, 2 Woods, 229; The S. R. Dunlap, 1 Low. 350.

² The George T. Kemp, 2 Low. 477; The Schooner Senator, 3 N. Y. Weekly Dig. 430.

³ The Brig E. A. Barnard, 3 Fed. Rep. 712 (June 4, 1880), reported by Frank P. Prichard, of the Philadelphia Bar.

⁴ Gurney v. Crockett, Abbott Adm. 490.

⁵ The Canal Boat Dan Brown, 9 Ben. 309 (1878).

⁶ Scott & Others v. The Ira Chaffee, 3 Fed. Rep. 401.

⁷ Wilcox v. Five Hundred Tons of Coal, U. S. Circuit Court, N. D. Illinois, per Drummond, J., Chicago Legal News, Aug. 19, 1882, p. 402; Bags of Linseed, 1 Black, 109.

⁸ The Brig E. A. Barnard, 3

CHAPTER IV.

COLLISION.

SECTION I. — DEFINITION.

COLLISION, in the nautical acceptation of that term, imports the impinging of vessels together while in the act of being navigated; but the term applies equally to cases where a vessel is run foul of when entirely stationary, or when brought in contact by swinging at her anchor.¹

Two things must concur for an act of collision: it must be a collision by the act of one party, and no want of ordinary care to avoid it on the part of the other.²

SECTION II. — RIGHTS. BY WHAT LAW REGULATED.

The rights of the parties in an action for a collision depend on the law of the place where the collision occurred; ³ but if a collision takes place on the high seas, between vessels of different nationalities, the rules of the maritime law are to determine which was in fault.⁴

¹ *The Moxey*, Abb. Adm. 73.

² *The Pilot*, 1 Biss. 164; *Sills v. Brown*, 9 Car. & P. 601.

³ *Smith v. Condry*, 1 How. 28; *The Peerless*, Lush. 30; *The China*, 7 Wall. 64; *The Eagle*, 8 Wall. 21; *The Scotia*, 7 Blatchf. 321.

⁴ *The Belle*, 1 Ben. 320; *The Scotia*, 14 Wall. 170; 7 Blatchf. 326;

The Chancellor, 4 Ben. 153; *The Saxonia*, Lush. 410; *The Dumfries*, Swa. 63; *The Zollverein*, Swa. 96; *Williams v. Gulch*, 14 Moore P. C. 202, explaining *The Cleadon*, Lush. 158; 4 L. T. n. s. 157. But see *The New Ed v. Gustow*, Holt Rule of the Road, 28; *The Fyenoord*, Swa. 374.

Sailing rules and regulations, prescribed by law, furnish paramount rules of decision whenever they are applicable;¹ but local usages are but little regarded,² as vessels are not bound by the regulations of a foreign country.³

The principles which will be discovered to be the foundation of the decisions in connection with collisions between vessels are identical with those which have ruled the decisions in the case of land carriage.⁴

SECTION III. — PRECAUTION TO AVOID COLLISION.

A vessel about to get under way should notify a vessel at anchor, so near to her that there is danger of collision, of her intention to get under way.⁵

A vessel entering a harbor is bound to exercise great care and diligence.⁶

The safeguards against danger, in order to be effectual, must be seasonably employed.⁷

It is enough that the precautions are reasonable under the circumstances; the highest degree of caution is not needed.⁸

Where practicable, a vessel is bound to take the

¹ *The City of Washington*, 92 U. S. 31.

² *Wheeler v. The Eastern State*, 2 Curt. 141; *The Clement*, 2 Curt. 363; *The Lion*, 1 Sprague, 40; *The E. C. Scranton*, 3 Blatchf. 50; 4 Ben. 127; *The Merrimac*, 14 Wall. 203; *The Carolus*, 2 Curt. 69; *The Topaze*, Holt Rule of the Road, 165; *The Western Metropolis*, 7 Blatchf. 214.

³ *Don v. Lipman*, 5 Clark & F. 1; *The Vernon*, 1 W. Rob. 319.

⁴ *Law of Carriers*, by J. H. Balfour Browne, London, 1878, p. 459. See *Edwards on Bailments*, §§ 17, 34 *et seq.*

⁵ *O'Neil v. Sears*, 2 Sprague, 52.

⁶ *Culbertson v. Shaw*, 18 How. 584; *Ward v. The Donsman*, 6 McLean, 231.

⁷ *The W. H. Clark*, 5 Biss. 303; *The Johnson*, 9 Wall. 146; *The Carroll*, 8 Wall. 302; *The Vanderbilt*, 6 Wall. 225; *Killam v. The Eri*, 3 Cliff. 456.

⁸ *The Colorado*, 1 Brown Adm. 403; *The Grace Girdler*, 7 Wall. 196; *Union S. S. Co. v. New York, &c. Co.*, 24 How. 307; *The Washington*, 14 How. 532; *The Morning Light*, 2 Wall. 550.

necessary precautions for avoiding a collision, although the other vessel is acting wrongfully in not giving way in time.¹

Every precaution must be taken by the injured vessel, after a collision, to make the loss as light as possible.²

SECTION IV.—DUTY AND OBLIGATIONS OF STEAMERS.

A steamer going on her customary route should keep in her usual track.³

Neither rain, darkness, nor the absence of lights on the sail-vessel, nor the fact that the steamer was well manned, furnished, and conducted with care, will excuse her if out of her usual track.⁴

In thoroughfares, when the darkness is such that it is impossible or difficult to see approaching vessels, it is their duty "to slow," or even stop, or back their engines, according to circumstances; and the principle of the rule may be applied, in a qualified sense, to sail-vessels.⁵

Two steamers approaching should both stop their engines, in view of danger, till the course and direction of each is clearly ascertained.⁶

¹ *St. John v. Paine*, 10 How. 557; *ter v. The Miranda*, 6 McLean, Haney v. Baltimore S. P. Co., 23 How. 287; *The Ann Caroline*, 2

Wall. 538; *Foster v. The Miranda*, Newb. 227; 6 McLean, 221; *The Santa Claus*, Olcott, 428; *The Vanderbilt*, Abb. Adm. 361; *Allen v. Mackay*, 1 Sprague, 219; *The Hope*, 1 W. Rob. 154; *The Friends*, 1 W. Rob. 478; *The Shannon*, 2 Hagg. Adm. 173; *The Lady Anne*, 1 Eng. L. & Eq. 670.

² *The S. F. Gale*, Newb. 232; *Newton v. Stebbins*, 10 How. 586; *St. John v. Paine*, 10 How. 557; *The Cynosure*, 1 Sprague, 88; *Fos-*

³ *The Bay State*, 3 Blatchf. 48; *The Vanderbilt*, 6 Wall. 225; *N. Y. & V. S. S. Co. v. Calderwood*, 19 How. 241.

⁴ *Pope v. The R. B. Forbes*, 1 Cliff. 343; *Williams v. Hill*, 19 How. 246.

⁵ *The Morning Light*, 2 Wall. 559; *The Rose*, 7 Jur. 381; *The Virgil*, 2 W. Rob. 201; 7 Jur. 1174; *The Leo*, 11 Blatchf. 225.

⁶ *Waring v. Clarke*, 5 How. 502; *The James Watt*, 2 W. Rob. 270; 8 Jur. 320.

Where one steamer is going with the tide, and another against it, and one should be required to stop, it is the duty of the one going against the tide to do so.¹

The obligations and duties of steam-vessels are rigidly enforced.²

SECTION V.—STEAMERS TO AVOID SAIL-VESSELS.

The duty to avoid a collision is primarily on the steamer.³

Services rendered by a steamer to a sailing-vessel run down by fault of the steamer do not entitle the steamer to claim salvage.⁴

A steamer is bound to use, effectively and promptly, the extraordinary means she possesses, to avoid collision with a sailing-vessel, and is liable for the consequences of a collision occurring through her neglect to use them.⁵

A steamer approaching a sail-vessel is required to exercise necessary precautions to avoid collision.⁶

¹ *The Galatea*, 92 U. S. 439.

² *The Atlantic*, Newb. 154; *Ward v. The Ogdensburg*, 5 McLean, 638; *The Leopard*, 2 Ware (Dav.), 193; *The Europa*, Br. & L. 87; 2 Eng. L. & Eq. 557; *The Genessee Chief*, 12 How. 443; *The Rose*, 2 W. Rob. 1; 7 Jur. 381; *The Virgil*, 2 W. Rob. 201; 7 Jur. 1174.

³ *Haney v. The Louisiana*, Taney, 602; *The Kentucky*, 4 Blatchf. 325; *The Fannie*, 11 Wall. 238; *The Fashion v. Wards*, 6 McLean, 176; *St. John v. Paine*, 10 How. 557; *Baker v. The City of New York*, 1 Cliff. 75; *The Pacific*, Newb. 31.

⁴ *The Samuel H. Crawford*, 6 Fed. Rep. 906 (1881).

⁵ *The Bay State*, 11 N. Y. Leg. Obs. 297; *Butterfield v. Boyd*, 18

How. Pr. 527; *Carpenter v. The Island City*, 2 Int. Rev. Rec. 109; *The Sampson*, 3 Am. L. Reg. 337; *Twibell v. The Keystone*, 9 N. Y. Leg. Obs. 289; *The Jamaica St. Ferryboat Collision*, 11 N. Y. Leg. Obs. 242; *The Iola*, 11 N. Y. Leg. Obs. 263; *The Empire State*, 12 N. Y. Leg. Obs. 259; *The Wenona*, 4 Ben. 219; *The Nichols*, 7 Wall. 656; *The Carroll*, 8 Wall. 302; *The Oregon v. Rocca*, 18 How. 570.

⁶ *New York, &c. Co. v. Rumball*, 21 How. 384; *St. John v. Paine*, 10 How. 557; *The Oregon v. Rocca*, 18 How. 570; *The New Jersey, Olcott*, 419; *Lowry v. The Portland*, 1 Law Rep. 313; *The Hope*, 1 W. Rob. 157.

So, a steamer is bound to avoid a vessel at anchor ;¹ nothing will excuse her for a collision with an anchored vessel or one sailing in the thoroughfare out of the usual track of the steamer.²

SECTION VI.—RATE OF SPEED OF STEAMERS.

They are required to go at a moderate rate of speed ;³ such a rate as will place their headway under such easy and ready command that they can be stopped within such distance as other vessels can be seen from them.⁴

It is no excuse for excessive speed that the steamer could not otherwise fulfil a mail contract.⁵

SECTION VII.—OBLIGATIONS TO SLACKEN SPEED.

It is the duty of a steamer to proceed at such a rate of speed as will enable her, after discovering a vessel meeting her, to stop and reverse her engines in sufficient time to prevent a collision.⁶

¹ *Waring v. Clarke*, 5 How. 441; How. 108; *The James Adger*, 3 The *Girolamo*, 3 Hagg. Adm. 169; Blatchf. 515; *The Northern Indiana*, The *Eolides*, 3 Hagg. Adm. 367; 3 Blatchf. 92; *The Rose*, 2 W. Rob. The *Baron Holberg*, 3 Hagg. Adm. 1; 7 Jur. 381; *The Vivid*, Swa. 88. 244.

² *Amoskeag M. Co. v. The John Adams*, 1 Cliff. 413; *New York, &c. Co. v. Calderwood*, 19 How. 241.

³ *The Blackstone*, 1 Low. 488; 638; *The Great Eastern*, 11 L. T. The *St. Louis v. The A. Rossiter*, n. s. 5; *Ward v. The Ogdensburgh*, 5 McLean, 638; *The Huntsville*, 8 Blatchf. 228; *The Favorita*, 4 Ben. 134; 8 Blatchf. 530; *The Leopard*, 2 Ware (Dav.), 193; *The Genessee Chief*, 12 How. 443; *The Syracuse*, 9 Wall. 676; *The Blackstone*, 1 Low. 488; *The Batavia*, 9 Moore P. C. C. 287; *The City of Paris*, Holt R. R. 15; *The Hansa*, 5 Ben. 501; *The Despatch*, Swa. 138; *The Europa*, 2 Eng. L. & Eq. 557; *The*

⁴ *The Colorado*, 1 Brown Adm. 406; *The Louisiana*, 2 Ben. 371; *The Western Metropolis*, 7 Blatchf. 214; 2 Ben. 399; *The D. S. Gregory*, 2 Ben. 166; 6 Blatchf. 166; *McCready v. Goldsmith*, 18 How. 89; *Abb. Adm.* 235; *The Leo*, 11 Blatchf. 225.

⁵ *Rogers v. The St. Charles*, 19

Where a steam-vessel, proceeding in the dark, hears a hail from a source which she cannot or does not see, it is her duty instantly to stop and reverse her engine, not simply to slow.¹

The duty to check speed and change direction devolves upon the steamer alone, and the sail-vessel has a right to hold her course.²

Some affirmative evidence of danger must be present to impose the duty of decreasing speed.³

SECTION VIII. — FOG-SIGNALS.

By day there must be fog enough to shut out the view of the sails or the hull, or by night the lights, within the range of the horn, whistle, or bell.⁴

If lights could be plainly and easily made out at a mile, it would not amount to a fog, in the sense of the law.⁵

Lady of the Lake, Holt R. R. 24, 202; *The Rose*, 2 W. Rob. 1; *The Saxonia*, Lush. 410; *The Virgil*, 2 W. Rob. 201; *The Karl*, Holt R. R. 203; *The Fanny Buck*, Holt R. R. 193; *The Sylph*, 2 Spinks, 55; *The James Watt*, 2 W. Rob. 270; *The Ligo*, 2 Hagg. Adm. 356; *The Bolderaa*, Holt R. R. 205; *Nelson v. Leland*, 22 How. 48; *The Hermann*, 4 Blatchf. 441; *The Northern Indiana*, 3 Blatchf. 92; 16 Law Rep. 433; *The Birkenhead*, 3 W. Rob. 75; *The Empire State*, 2 Biss. 216.

¹ *The Hypodame*, 6 Wall. 225, distinguishing *The Osprey*, 2 Wall. Jr. 268. And see *The Perth*, 3 Hagg. Adm. 414; *The Frauk Mofat*, 11 Ch. L. N. 115.

² *The Northern Indiana*, 3 Blatchf. 99; *The Genessee Chief*, 12 How. 443; *The Perth*, 3 Hagg.

Adm. 414; *The Iron Duke*, 2 W. Rob. 377; *The Rose*, 2 W. Rob. 1; *St. John v. Paine*, 10 How. 557.

³ *The Free State*, 1 Brown Adm. 266; *The New York*, 18 How. 223; *McCready v. Goldsmith*, 18 How. 89; *The St. Charles*, 19 How. 108; *The Louisiana*, 21 How. 1; 2 Ben. 377; *Nelson v. Leland*, 22 How. 48; *The City of Paris*, 9 Wall. 634; *The Bay State*, Abb. Adm. 235; *The Electra*, 1 Ben. 282; *The Northern Indiana*, 3 Blatchf. 92; *The A. Rositer*, Newb. 225; *The Buffalo*, Newb. 115; *The James Watt*, 2 W. Rob. 271; *The Birkenhead*, 2 W. Rob. 75; *The Cognac*, Holt Ru. of Rd. 143; *The Concordia*, Holt, Ru. of Rd. 142; *The Sunnyside*, 6 Am. L. T. 277.

⁴ *The Monticello v. Mollison*, 17 How. 152; 1 Low. 184.

⁵ *Ibid.*

SECTION IX. — SIGNAL-LIGHTS.

The exhibition of a light is a precaution so imperiously demanded by prudence, that the neglect is considered as negligence *per se*.¹

The neglect may amount to contributory negligence, which will prevent the guilty vessel from recovering damages.²

The rules of navigation as to the exhibition of lights are obligatory upon the commercial states of the world who have accepted them, and are regarded as the laws of the sea and subject to judicial notice.³

The substance of the regulation is that the lights shall be fairly visible; there is no order that they shall be fixed in any peculiar manner, or in any particular part of the ship.⁴

SECTION X. — LIGHTS REQUIRED BY STATUTE.

By the act of Congress of 1838, it is made the duty of the master and owner of every steamboat to carry one or more signal-lights that may be seen by other boats navigating the same waters, under a penalty of \$200;⁵ and by the act of 1849 said lights were to be

¹ *Simpson v. Hand*, 6 Whart. 811; *The Oratava*, 5 Mon. Law Mag. 45; *The Columbine*, 2 W. Rob. 27; *The Blue Wing v. Buckner*, 12 B. Mon. 246; *Ward v. Armstrong*, 14 Ill. 283; *Taylor v. Harwood*, Taney, 437; *Cohen v. The Mary T. Wilder*, Taney, 567. Vessels held in fault for not exhibiting lights in time: *The Gloria Deo*, Pratt on Lights, 35; *The Rob Roy*, 3 W. Rob. 191; *The Imperatriz*, Pratt on Lights, 35; *The Clarence*, Pratt on Lights, 36; *The Juliana*, Swa. 20; *The Neptune*, Pratt on Lights, 58; *The Gulnare*, Pratt on Lights, 59; *The Mangerton*, Swa. 120; *The Alma*, Holt R. R. 250.

² *Green v. The Adelaide*, Taney, 575.

³ *The Scotia*, 14 Wall. 171; *The Continental*, 14 Wall. 315.

⁴ *The City of Carlisle*, Br. & L. 363.

⁵ *Waring v. Clarke*, 5 How. 441; *The Santa Claus*, Olcott, 428; *Bullock v. The Lamar*, 8 Law Rep. 275.

furnished with reflectors, &c., complete, and of a size to insure a good and sufficient light.¹

By the act of Congress of 1864, the green and red side-lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.²

All steamers when under way must carry a green light upon the starboard side, and a red light on the port side.³

And see U. S. Rev. Stat. pp. 821, 822, § 4233; p. 1045, § 5358; and for lights and buoys, see U. S. Rev. Stat. pp. 913-916, §§ 4653-4680.

Where the night was moonlight, though occasionally obscured, there was no obligation imposed on a vessel to exhibit a light.⁴

SECTION XI.—EXHIBITING FALSE LIGHTS.

The exhibition by a vessel of a prohibited light does not absolve the other vessel from the observance of that degree of caution, care, and skill which the exigencies of the case require.⁵

SECTION XII.—FAULTS BY OMISSION TO EXHIBIT LIGHTS.

A vessel failing to exhibit her lights will be held in fault in a case of collision.⁶

¹ *Foster v. The Miranda*, Newb. 227; 6 McLean, 221; *Chamberlain v. Ward*, 21 How. 539, 572.

² *The City of Paris*, Holt R. R. 15; *The Lady of the Lake*, Holt R. R. 38.

³ *The Ottawa*, 8 Wall. 268.

⁴ *The Louisiana v. Fisher*, 21 How. 1; *Baker v. The City of New York*, 1 Cliff. 75; *The Tillie*, 13 Blatchf. 514.

⁵ *The Scotia*, 7 Blatchf. 328; *The Continental*, 14 Wall. 345; *Greening v. The Gray Eagle*, 17 Am. Law Reg. n. s. 226; 9 Wall. 505;

1 Biss. 481. And see *Chamberlain v. Ward*, 21 How. 539; *Swift v. Brownell*, 1 Holmes, 467; *The S. F. Gale and The Miranda*, Newb. 234; *The Hope*, 1 W. Rob. 154.

⁶ *The Parkersburgh*, 5 Blatchf. 247; *Bullock v. The Lamar*, 8 Law Rep. 275; 1 West. L. J. 444; *The Frank Moffatt*, 11 Ch. L. N. 114; *Larco v. The Martha Elizabeth*, 1 Sawyer, 120; *The Union*, 7 Ben. 296; *The City of Washington*, 6 Ben. 138; 11 Blatchf. 487; U. S. Rev. Stat. § 4234.

SECTION XIII. — LIGHTS FOR VESSELS AT ANCHOR.

A vessel at anchor in a harbor or in a navigable river must show a light.¹

Where a boat is anchored in the path of commerce, a light is indispensable, but not when fast to the shore at a place set apart for such boat to lie.²

Pilot-boats at anchor in roadsteads and fairways are required to exhibit a white light in a globular lantern of eight inches in diameter.³

Where a vessel at anchor at a proper place exhibited the legal lights, the burden is on the colliding vessel to show that she was without fault, or that the disaster was the result of inevitable accident.⁴

The rule as to vessels at anchor exhibiting lights is imperative, whether the night be light or dark.⁵

SECTION XIV. — VESSELS AT ANCHOR.

A vessel at anchor in a gale is bound to adopt the proper means to avoid a collision; and if she does not, she is a participant in the wrong, and must share in the loss.⁶

¹ *The Indiana*, Abb. Adm. 330; *Hain v. The North America*, 2 N. Y. Leg. Obs. 67; *Rogers v. The St. Charles*, 19 How. 108. And see *Corsley v. White*, 21 Pick. 254; *New Haven S. Co. v. Vanderbilt*, 16 Conn. 420.

² *The Bridgeport*, 14 Wall. 119; *Culbertson v. The Southern Belle*, 18 How. 584; *Ure v. Coffman*, 19 How. 56; *Willard v. Saulsbury*, 1 Low. 97; *The Granite State*, 3 Wall. 310; *Rogers v. The St. Charles*, 19 How. 108; *The James Gray v. The John Frazer*, 21 How. 184.

³ *The Wanata*, 95 U. S. 600; 4 Ben. 310.

⁴ *The Clara and Clarita*, 5 Ben. 381; *The John Adams*, 1 Cliff. 404; *Sterling v. The Jennie Cushman*, 3 Cliff. 636; *The Scioto*, 2 Ware (Dav.), 359; *Strout v. Foster*, 1 How. 89; *The Batavier*, 2 W. Rob. 407. And see *Hall v. Little*, 6 Reporter, 577.

⁵ *The Harriet*, 1 W. Rob. 182. She is in fault for not having lights or lookout. *The Clara*, 13 Blatchf. 509; *The Sapphire*, 11 Wall. 170; *The Indiana*, Abb. Adm. 330; *The Mary T. Wilder*, Taney, 567; *The Lydia*, 4 Ben. 523.

⁶ *The Sapphire*, 11 Wall. 164.

Contributing to a collision by being anchored in an improper place, deemed a fault.¹

SECTION XV.—LOOKOUT.

A vessel not having a lookout properly stationed independent of the helmsman, will be liable for injuries sustained in a collision with other vessels which were managed with ordinary care and skill,² unless the collision was not owing to the absence of the lookout;³ but the omission is *prima facie* evidence of fault.⁴

The precaution of a lookout is not indispensable, where, from the circumstances, a lookout could not possibly be of service.⁵

A vessel anchored in a river having a rapid current should keep a watch.⁶

A steamer is bound to exercise the greatest care in

¹ Strout v. Foster, 1 How. 89; The Scioto, 2 Ware (Dav.), 359; The Marcia Tribou, 2 Sprague, 17; Amoskeag M. Co. v. The John Adams, 1 Cliff. 413. See O'Neil v. Sears, 2 Sprague, 52.

² Pope v. The R. B. Forbes, 1 Cliff. 347; The Catherine v. Dickinson, 17 How. 170; The Genessee Chief, 12 How. 443; The Blossom, Olcott, 194; The Emily, Olcott, 132; s. c. 1 Blatchf. 238; Poole v. The Washington, 9 N. Y. Leg. Obs. 321; The Alabama and Gamecock, 1 Ben. 476. Whether under way or at anchor: The Ann Caroline, 2 Wall. 538; Whitridge v. Dill, 23 How. 448; The Marcia Tribou, 1 Sprague, 17; The Emily, Olcott, 132; The Blossom, Olcott, 188; The Rebecca, Blatchf. & H. 341; The Clement, 17 Law Rep. 444; The Chester, 3 Hagg. Adm. 316; The Diana, Lush. 539; The City of Car-

lisle, 11 Law T. n. s. 33; The Pres- to, Holt R. R. 103; The Maria, Holt R. R. 105.

³ The Young America, 1 Brown, 550; The Victor, 1 Brown, 449; Shirley v. The Richmond, 2 Woods, 58; The Farragut, 10 Wall. 334; The Fannie, 11 Wall. 238; The Atlas, 10 Blatchf. 465; 4 Ben. 27; The Pennsylvania, 4 Ben. 257; 9 Blatchf. 451; 10 Wall. 125; 12 Blatchf. 67; The Louisiana, 6 Am. Law Reg. 422; Mellon v. Smith, 2 E. D. Smith, 462; The Hattie Ross, U. S. D. C. Conn., Shipman, J., 1866; The Empire State, 2 Biss. 216.

⁴ The Nabob, 1 Brown Adm. 123; The Louisiana v. The Fisher, 21 How. 1; Western Ins. Co. v. The Goody Friends, 1 Bond, 459.

⁵ The Farragut, 10 Wall. 334; The Fannie, 11 Wall. 238; Shirley v. The Richmond, 2 Woods, 58.

⁶ The Petrel, 6 McLean, 491.

approaching a sail-vessel, and a neglect of this duty is contributory negligence;¹ and every doubt should be resolved against her, until clear proof to the contrary is adduced.²

There is no fixed position for a lookout established by law;³ his proper position is where he can see as well as in any other place.⁴

SECTION XVI. — RULES OF NAVIGATION.

Every steam-vessel which is under sail, and not under steam, shall be considered a sail-vessel; and every steam-vessel which is under steam, whether under sail or not, shall be considered a steam-vessel.⁵

The rules of navigation are to be strictly adhered to;⁶ they are employed as standards to regulate the appreciation of care, skill, and fidelity with which the vessel performs her duties in cases of collision.⁷

It is not advisable to allow these important regulations to be satisfied by equivalents, or by anything less than a close and literal adherence to what they pre-

¹ *The Empire State*, 2 Biss. 216; *The Carroll*, 8 Wall. 802; *The Fairbanks*, 9 Wall. 420; *The Corsica*, 9 Wall. 630; *The Scotia*, 14 Wall. 170; *The Continental*, 14 Wall. 345; *The Chesapeake*, 5 Blatchf. 411; *The Huntsville*, 8 Blatchf. 228. And see *Rev. Stat.* § 4233.

² *The Ariadne*, 18 Wall. 475; *The Genessee Chief*, 12 How. 443; *The Louisiana v. Fisher*, 21 How. 1.

³ *The Kallisto*, 2 Hughes, 128; *The Flora*, 2 Hughes, 114; *O'Neil v. Sears*, 2 Sprague, 52; *The Indiana*, Abb. Adm. 330; *The John H. Abeel*, 4 Ben. 58; *The Alma*, Holt R. R. 250.

⁴ *The Morning Light*, 2 Wall. 558; *The Genessee Chief*, 12 How. 443; *St. John v. Paine*, 10 How. 557.

⁵ *The Hypodame*, 6 Wall. 216; *The Sunnyside*, 1 Brown Adm. 250, explaining *The Gray Eagle*, 9 Wall. 505; *The Pilot*, 1 Biss. 159; *The Scotland*, 1 Ben. 295; *The C. C. Vanderbilt*, Abb. Adm. 361; *The Oregon v. Rocca*, 18 How. 570; *The Hope*, 1 W. Rob. 154.

⁷ *The Santa Claus*, Olcott, 435; *The Hope*, 1 W. Rob. 154; *The Friend*, 1 W. Rob. 478.

scribe¹ (*The Emperor*, Holt R. R. 38); but they are not absolutely inflexible.²

They do not apply to vessels after approaching so near, that collision is inevitable;³ or while they are so far, that measures of precaution have not become necessary.⁴

SECTION XVII. — RIVER NAVIGATION.

Where a vessel is approaching a point of the river where there are dangerous obstructions, and in a high state of the wind, it is her duty to lie by till the wind has gone down.⁵

Where, to avoid the danger from natural obstructions, a vessel changes her course, after passing them she is bound to resume her original course.⁶

The master of a steamer is bound to know the difficulties of the navigation.⁷

Where a vessel is moving down with the current, meeting a vessel going up, the vessel moving the slowest is less bound to precaution.⁸

An overtaking vessel must see to it that she selects the time and place in which to pass safely if the other does nothing to thwart her; and she is in fault in case of a collision.⁹

¹ *The Pennsylvania*, 19 Wall. 135.

² *The Santa Claus*, Olcott, 435; *The Friend*, 1 W. Rob. 478.

³ *The Wenona*, 19 Wall. 52; *New York, &c. Co. v. Rumball*, 21 How. 372.

⁴ *The Wenona*, 19 Wall. 52; *The Monticello v. Mollison*, 17 How. 152; *Baker v. The City of New York*, 1 Cliff. 89; *Newton v. Stebbins*, 10 How. 580.

⁵ *The Mohler*, 21 Wall. 230.

⁶ *The John L. Hasbrouck*, 93 U. S. 405.

⁷ *The Lady Pike*, 21 Wall. 1.

⁸ *Waring v. Clarke*, 5 How. 502; *The Chester*, 8 Hagg. Adm. 316.

⁹ *The Oceanus*, 5 Ben. 546; 12 Blatchf. 430; *The Narragansett*, 5 Ben. 258; *The Governor*, Abb. Adm. 108; *Whitridge v. Dill*, 23 How. 448; *The Rhode Island*, 1 Blatchf. 863.

SECTION XVIII. — SAIL-VESSELS MEETING.

If two vessels are meeting end on, or nearly end on, so as to involve the risk of a collision, the helms of both shall be put to port, so that each may pass on the port side of the other; and a neglect to do so, or a star-boarding, is a fault.¹

If vessels are approaching each other end on, with berth enough to exclude the possibility of their coming together, they are not required to port helm.²

SECTION XIX. — STEAMERS MEETING.

If two steamboats are approaching each other in such a direction that there is danger of a collision, each should put her helm aport, and go to the right.³

When steamers meeting steamers end on neglect, until too late to avoid a collision, to comply with the regulations to port helms, proof of porting the helm is no defence; compliance with the rule must be seasonable.⁴

SECTION XX. — STEAMER MEETING SAIL-VESSEL.

If two vessels, one a sail-vessel and the other a steam-vessel, are proceeding in such directions as to involve risk of collision, the steam-vessel shall keep out of the

¹ *The Nichols*, 7 Wall. 656; *The Queen Dowager*, Pratt on Lights, 58; *The Gratitude*, 4 Ben. 62; *The Edmund Levy*, 6 Ben. 371; *The Sylvester Hall*, 8 Ben. 523; *The F. C. Scranton*, 3 Blatchf. 53; *The Niagara*, 3 Blatchf. 37.

² *The George Law*, 3 Ben. 466; *The Nichols*, 7 Wall. 656; *Ward v. The Ogdensburgh*, 5 McLean, 637; *Newb.* 153; *The Rose*, 2 W. Rob. 1.

³ *City of Hartford v. The Unit*, 11 Blatchf. 72; *New York Trans. Co. v. Philadelphia S. N. Co.*, 22 How. 461; *Union S. S. Co. v. New York S. S. Co.*, 24 How. 307; *Waring v. Clarke*, 5 How. 502; *St. John v. Paine*, 10 How. 557; *The Johnson*, 9 Wall. 153; *The Nichols*, 7 Wall. 656; *The Oregon v. Rocca*, 18 How. 570.

⁴ *The America*, 92 U. S. 432.

way of the sail-vessel, and the sail-vessel shall keep her course;¹ and the steamer will be deemed in fault for not keeping out of the way.²

When the sail-vessel changes her course, the steamer should change also, to avoid a collision.³

After the sail-vessel has put about and come on her new course, she is bound to keep it, and the steamer must keep out of her way.⁴

SECTION XXI. — VESSEL TO HOLD HER COURSE.

The duty of the sail-vessel, even with the wind free, to hold her course is imperative.⁵

She has no right to deviate,⁶ except it be necessary to avoid immediate danger arising from natural causes,⁷ or when there is an immediate danger of collision;⁸ but she has no right to deviate because she *might* thereby avoid a collision, unless in case of imminent danger.⁹

A vessel whose duty it is to keep her course should

¹ *The Scotia*, 14 Wall. 170; *St. John v. Paine*, 10 How. 557; *The Lucille*, 15 Wall. 676; *The Falcon*, 19 Wall. 75; *New York, &c. Co. v. Philadelphia, &c. Co.*, 22 How. 472; *The Genessee Chief*, 12 How. 443; *New York, &c. Co. v. Rumball*, 21 How. 384; *Newton v. Stebbins*, 10 How. 580; *Crockett v. Newton*, 18 How. 581; *The Oregon v. Rocca*, 18 How. 570; *The Fannie*, 11 Wall. 238; *The City of Paris*, 9 Wall. 638; *The Syracuse*, 9 Wall. 676.

² *St. John v. Paine*, 10 How. 557.

³ *The Scotia*, 14 Wall. 170.

⁴ *New York, &c. Co. v. Rumball*, 21 How. 372; *The Genessee Chief*, 12 How. 413.

⁵ *Bentley v. Coyne*, 4 Wall. 509;

The City of Paris, 9 Wall. 634; *The Fannie*, 11 Wall. 238.

⁶ *The Carroll*, 8 Wall. 302; *The Johnson*, 9 Wall. 146; *Crockett v. Newton*, 18 How. 581; *New York, &c. Co. v. Rumball*, 21 How. 372.

⁷ *The John L. Hasbrouck*, 95 U. S. 405; *The Cornelius C. Vanderbilt*, Abb. Adm. 364; *The Naragansett*, Olcott, 388; *The Neptune*, Olcott, 483.

⁸ *The Monticello v. Mollison*, 77 How. 152; *Peck v. Sanderson*, 17 How. 178; *The Ariadne*, 2 Ben. 472; *7 Blatchf.* 211; 13 Wall. 475.

⁹ *Crockett v. Newton*, 18 How. 581; *New York, &c. Co. v. Rumball*, 21 How. 372; *The Johnson*, 9 Wall. 146; *The Carroll*, 8 Wall. 302; *The Corsica*, 9 Wall. 630.

not anticipate the motions of the other vessel, and give way; the certainty which results from adhesion to general rules is absolutely essential to the safety of navigation.¹

If the breach of the rule requiring vessels to hold their course did not contribute to the collision, the violation will have no effect.²

SECTION XXII. — VESSELS OVERTAKING.

Every vessel overtaking any other vessel shall keep out of the way of the last-named vessel.³

There is imposed upon the rear boat an obligation to precaution and care, which is not chargeable to the same extent to the other.⁴

A steamer about to cross another steamer on her starboard side, and being also the following vessel, was in fault in case of a collision.⁵

SECTION XXIII. — DEPARTURE FROM RULES.

In general, established rules and known usages should be carefully followed; but no vessel is justified by a pertinacious adherence to a rule for getting into a collision with a ship which she might have avoided.⁶

¹ *The Ariadne*, 13 Wall. 475.

² *The Fairbanks*, 9 Wall. 425; *New York, &c. Co. v. Rumball*, 21 How. 372; *The Genessee Chief*, 12 How. 443; *The Monticello v. Molison*, 17 How. 154; *St. John v. Paine*, 10 How. 557; *The Emma*, Holt R. R. 207.

³ *The Grace Girdler*, 7 Wall. 196; *The Lena*, Holt R. R. 61, 813; *The Emma*, Holt R. R. 252; *The Intrepid*, Holt R. R. 210; *The Emily*, Holt R. R. 217; *The Royal*

Consort, Holt R. R. 220; *The Evangeline*, Holt R. R. 217.

⁴ *The Great Republic*, 23 Wall. 20; *Whitridge v. Dill*, 23 How. 448.

⁵ *The Columbia*, 10 Wall. 246.

⁶ *Allen v. Mackay*, 1 Sprague, 219; *The C. C. Vanderbilt*, Abb. Adm. 361; *The Friend*, 1 W. Rob. 478. And see *Wedgwood, Government and Laws of the United States*, pp. 279-281.

The rules are not inflexible, and a strict observance should be avoided when there is a plain risk in adhering to them;¹ they must not be stubbornly adhered to.²

These rules have their exceptions in extreme cases, depending upon the special circumstances of the case, and in respect to which no general rule can be applied.³

On departure from the rules, the vessel takes on herself the obligation of showing that the departure was necessary to avoid immediate danger, and that the course adopted was reasonably calculated to do so.⁴

SECTION XXIV.—ERROR IN EXTREMIS.

Where a vessel commits an error under impending danger, or *in extremis*, produced or brought about by another vessel, such error cannot be alleged as a fault.⁵

Acts done in the excitement of the moment, and *in extremis*, are, if unwise, errors, and not faults; whether wise or unwise is not material.⁶

¹ The Pilot, 1 Biss. 163; The Santa Claus, Olcott, 428; 1 Blatchf. 370.

² The Sunnyside, 1 Brown Adm. 250, explaining Crockett v. Newton, 18 How. 581.

³ St. John v. Paine, 10 How. 557; The Cayuga, 14 Wall. 276; New York, &c. Co. v. Rumball, 21 How. 372; The Orinoco, Holt R. R. 98; The Flora, Holt R. R. 114; The Great Eastern, Holt R. R. 167; Br. & L. 289; The Graaf Von Rechteren, Holt R. R. 247; The Emma, Holt R. R. 207; The Aura, Holt R. R. 255; The Grace Girdler, 9 Wall. 196.

⁴ The Corsica, 9 Wall. 630; The Concordia, Law Rep. 1 Adm. 93; Holt R. R. 142.

⁵ Bentley v. Coyne, 4 Wall. 509; The Nichols, 7 Wall. 656; The Fairbanks, 9 Wall. 420; The City of Paris, 9 Wall. 634; The Grace Girdler, 7 Wall. 201; The Genessee Chief, 12 How. 443; New York, &c. Co. v. Rumball, 21 How. 372. And see Whitridge v. Dill, 23 How. 448; The Lucille, 15 Wall. 676.

⁶ The City of Paris, 9 Wall. 634; The Genessee Chief, 12 How. 443.

Even when a wrong order is given, under the exigency of the circumstances it cannot be considered a fault.¹

In a case of sudden emergency, leaving no time for deliberation, great allowance should be made for any error in judgment.²

A vessel may put her helm to port or to starboard when a collision is inevitable, although it would have been an improper course to pursue before collision was inevitable.³

A fault on the part of a sail-vessel at the moment of the injury will not excuse a steamer which has suffered herself to get into such dangerous proximity as to cause the collision.⁴

SECTION XXV. — NEGLIGENCE.

Inability to prevent a collision exists at the time it occurs; but it is generally easy to trace the cause to some neglect or unskilful act, or antecedent omission of duty.⁵

Though a steamer displays proper lights, she will not be held blameless if she neglects other duties to avoid collision.⁶

¹ The Genessee Chief, 12 How. 443.

² The Merrimac, 14 Wall. 199; The Wenona, 19 Wall. 54; The Fairbanks, 9 Wall. 425.

³ The Ottawa, 3 Wall. 268; The Maria, Holt R. R. 105; The Tyrian, Holt R. R. 109; The Calypso, Holt R. R. 117; The Hannah Park, Holt R. R. 61; The Carlisle, Holt R. R. 121; The Evangeline, Holt R. R. 222.

⁴ The Lucille, 15 Wall. 676; The Carroll, 8 Wall. 302; The Falcon, 19 Wall. 78, distinguishing The Bal-

timore, 8 Wall. 377; The Fannie, 11 Wall. 238. Dangerous proximity must be produced altogether by the steamer. Haney v. Baltimore S. & P. Co., 23 How. 395; New York, &c. Co. v. Rumball, 21 How. 372; The Genessee Chief, 12 How. 443.

⁵ The Merrimac, 14 Wall. 203; New York, &c. Co. v. Rumball, 21 How. 372; The Wenona, 19 Wall. 41.

⁶ The Continental, 14 Wall. 359; The Gray Eagle, 9 Wall. 505; 2 Biss. 25; 1 Biss. 476.

It is negligence on the part of a steamer in not seeing the lights of an approaching vessel,¹ and a gross fault for not perceiving that a light which must have crossed from larboard to starboard was in motion and not at anchor.²

SECTION XXVI. — FAULTS.

If the unskillfulness or want of necessary qualifications of the deck officer contributed to the collision, the vessel under his charge will be considered in fault.³

SECTION XXVII. — INEVITABLE ACCIDENT.

Different definitions are given of inevitable accident, from the different circumstances attending the collision to which the rule is to be applied.⁴

An inevitable accident is that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution, or nautical skill.⁵

Mr. Lawson⁶ says, Sir William Jones piously objected to the use of the phrase "the act of God," as being irreverent, and proposed to put that of "inevitable accident" in its stead, intending, apparently, to give

¹ *The Java*, 6 Ben. 245; 14 Wall. 215; *Union S. S. Co. v. New York, &c. Co.*, 24 How. 307; *The James Gray v. The John Frazer*, 21 How.

² *The Gray Eagle*, 9 Wall. 505. 184; *The Perseverance*, Holt R. R.

³ *Chamberlain v. Ward*, 21 How. 262; *The Thomas Powell v. The Cuba*, 2 Mar. Law Cases, 344. See also *Flanders on Mar. Law*, 298; *New York, &c. Co.*, 24 How. 307.

⁴ *The Morning Light*, 2 Wall. 560; *Union S. S. Co. v. New York, &c. Co.*, 24 How. 307.

⁵ *The Morning Light*, 2 Wall. 560; *The Mabey and Cooper*, 14 Wall. 215; *Contracts of Carriers*, by John D. Lawson (Editor *Central Law Journal*), St. Louis, 1880.

the same restricted meaning to the latter phrase as had been given to the former.

SECTION XXVIII. — CONTRIBUTORY NEGLIGENCE.

Where damage is occasioned by carelessness of the party injured, an action will not lie.¹

SECTION XXIX. — BURDEN OF PROOF OF FAULT.

The burden of proof is on the libellant to establish fault in the vessel libelled.²

He must prove both care on his part, and the want of care on the part of the defendant.³

He must show the other vessel in fault, and that his was managed in a prudent and skilful manner, and interposed no needless impediments.⁴

Where every precaution is taken by the steamer, and damage is caused by negligence of the vessel, the vessel is in fault.⁵

SECTION XXX. — LIABILITY FOR DAMAGES.

The mere fact of a collision and damage does not render the vessel liable;⁶ and where a fault did not contribute to the collision, there can be no recovery.⁷

SECTION XXXI. — PERSONAL LIABILITY.

The liability of the vessel and the responsibility of

¹ *Waring v. Clarke*, 5 How. 441;
Newton v. Stebbins, 10 How. 586.

² *The Kallisto*, 2 Hughes, 128.

³ *The Steam Tug William Young*,
Olcott, 38; *The Columbus*, Abb.
Adm. 37; *The Freemont*, 1 Bond, 57.

⁴ *Smith v. Condry*, 1 How. 28;
The Alexander Wise, 2 W. Rob. 65.

⁵ *Lowry v. The Portland*, 1 Law
Rep. 313.

⁶ *Sturgis v. Boyer*, 24 How. 124;
The Albert, 11 Law Rep. n. s. 41;
The James Gray v. The John Frazer,
21 How. 184.

⁷ *The Manhasset*, 6 Ben. 301.

the owners are convertible terms, and one cannot exist without the other.¹

SECTION XXXII. — LIABILITY WHEN PILOT ON BOARD.

Where the statute, compelling a vessel to take a pilot, contains no clause exempting the vessel or owners from liability for the pilot's mismanagement, the vessel will be liable, though the collision result wholly from the pilot's mismanagement.²

In a case of collision, a steamboat is clearly in fault in not having a licensed pilot at the wheel, and a proper officer in charge, on watch, and in not being in her place in the river.³

SECTION XXXIII. — LIABILITY OF TUG AND TOW.

Where the officers and crew of the tow, as well as those of the tug, participate in the navigation of the vessels, and a collision with another vessel ensues, the tug alone, or the tow alone, or both jointly, are liable, according to their negligence or want of skill.⁴ The responsibility is determined by inquiring which vessel was the principal and which the servant.⁵

SECTION XXXIV. — OBSTRUCTION OF CHANNEL.

If a person wrongfully obstructs a navigable stream, he is liable for the consequences.⁶

¹ *The Freeman v. Buckingham*, 18 How. 189; *Taylor v. Carryl*, 20 How. 599.

² *The China*, 7 Wall. 63.

³ *The John F. Tolle* (Circuit Court, E. D. Louisiana, June, 1881, by Pardee, Ct. J., reported by Joseph P. Hornor, Esq., of the New Orleans Bar).

⁴ *The Maria Martin*, 12 Wall. 44; *Sturgis v. Boyer*, 24 How. 121; *The Syracuse*, 12 Wall. 167.

⁵ *The Alabama*, 1 Ben. 476; *The Sampson*, 8 Wall. Jr. 14.

⁶ *Philadelphia, &c. Co. v. Philadelphia S. T. Co.*, 23 How. 209.

It is familiar doctrine that the right of eminent domain over the shores and the soil under the waters resides in the State for all municipal purposes, and within the legitimate limitations of this right the power of the State is absolute, and an appropriation of the shores and lands is lawful. In the exercise of this right, the State may directly or indirectly, by delegation, authorize the construction of bridges, piers, wharves, or other obstructions in navigable waters. Such obstructions are not nuisances, because that cannot be a nuisance which is done by lawful authority. It is only when the exercise of this power of eminent domain comes in collision with the paramount authority of the United' States that it is inhibited and impotent. The power of the State ends where that of the national sovereignty begins; but until Congress has asserted its power to regulate commerce, and by legislation has assumed to restrict the jurisdiction of the State over its navigable waters, no conflict can arise, and the authority of the State is comprehensive. *Willson v. The Blackbird Creek Marsh Co.*, 2 Pet. 251; *Gilman v. The City of Philadelphia*, 3 Wall. 728; *County of Mobile v. Kimball*, 102 U. S. 691.

No act of Congress has been adverted to by counsel, or has met the observation of the court, which assumes to circumscribe the State of New York in the exercise of its power of eminent domain from authorizing such a limited interference with the navigation of the Hudson River as is apprehended here.

On the contrary, the cases decided in this court — *Silliman v. Hudson River Bridge Co.*, 4 Blatchf. 395 (affirmed by the Supreme Court, 2 Wall. 403), and *Silliman v. The Troy & West Troy Bridge Co.*, 11 Blatchf. 274 — are to the effect that a far more serious

obstruction to the navigation of the river is within the legitimate sanctions of the municipal power.

These cases are decisive against the theory that the defendant cannot occupy a portion of the river for the purposes of its railroad without an invasion of public right.¹

SECTION XXXV. — LIMITATION OF LIABILITY.

The owners are limited in their liability for a loss by collision to the amount of their interest in the vessel and freight.²

Their liability may be discharged by surrendering and assigning to a trustee, for the benefit of the parties injured.³

SECTION XXXVI. — REMEDY.

The proceedings may be *in rem*, or the lien may be waived, and proceedings *in personam* may be maintained against the master and owners.⁴

SECTION XXXVII. — RULE OF DAMAGES.

Where the collision is not wilful, the general rule of damages is that the owner of the injured vessel is to receive a remuneration which will place him in a situation in which he would have been but for the collision.⁵

¹ *Peter Ormerod v. The New York, West Shore, & Buffalo Railway Co.*, United States Circuit Court, Southern District of New York, Wallace, J. (published in the New Orleans Times-Democrat of Sept. 5, 1882, from the New York Maritime Register).

² *Norwich Co. v. Wright*, 13 Wall. 104; *The Niagara v. Cordes*, 21 How. 7.

³ *Norwich Co. v. Wright*, 13 Wall. 104.

⁴ *The Belfast*, 7 Wall. 643; *Sturgis v. Boyer*, 24 How. 110; *Chamberlain v. Ward*, 21 How. 539.

⁵ *The Baltimore*, 8 Wall. 386; *Williamson v. Barrett*, 13 How. 101.

Upon a libel in admiralty for a collision, the libellant may be allowed damages for the loss of the use of his vessel while laid up to repair the injuries thereby suffered; and if, at the time of the collision, she was in no need of repair, and was engaged in and peculiarly fitted for a particular business, and her charter value cannot be otherwise satisfactorily ascertained, the average of the net profits of her trips for the season may be adopted as the measure of the allowance.¹

The actual loss at the time and place of the injury is the measure of damages.²

SECTION XXXVIII. — ALLOWANCE FOR REPAIRS.

The general measure of damages, where repairs are practicable, is such a sum as will restore the vessel to her former condition.³

The party is to be put in the same situation as nearly as possible as he would have been had no collision taken place.⁴

Where a vessel is actually sunk, her owner is not bound to go to any expense to raise her.⁵

SECTION XXXIX. — ALLOWANCE FOR DEMURRAGE.

Compensation may include a reasonable allowance for demurrage for unavoidable detention during repairs.⁶

¹ *Steamboat Potomac v. Cannon*, Morrison's Transcript (vol. iv. No. 8, p. 839) of the Decisions of the Supreme Court of the United States, October Term, 1881; s. c. The Reporter, vol. xiii. No. 25, p. 769 (Boston, 1882).
² *Smith v. Condry*, 1 How. 28; *Williamson v. Barrett*, 13 How. 118; *The Gazelle*, 2 W. Rob. 279.
³ *The Cayuga*, 14 Wall. 278; *The Baltimore*, 8 Wall. 385; *The Ann Caroline*, 2 Wall. 538; *Valentine v. The Lake*, 2 Wall. Jr. 52.
⁴ *The Granite State*, 3 Wall. 310.
⁵ *The Falcon*, 19 Wall. 79.
⁶ *Williamson v. Barrett*, 13 How. 101; *The Baltimore*, 8 Wall. 377.

SECTION XL. — ALLOWANCE FOR LOSS OR DAMAGE TO CARGO.

The owners of a vessel wrongfully injured by a collision may recover for injury done to the cargo.¹

SECTION XLI. — LOSS, WHEN DIVIDED.

The loss will be divided in three cases : first, when there is no fault on either side ; second, when the fault is inscrutable ; and, third, when both vessels are in fault.²

Where there is no fault on either side,³ or if it cannot be ascertained where the fault lies, the damages will be divided.⁴

Where there is reasonable doubt as to which party is to blame, the loss must be sustained by the one on whom it has fallen.⁵

Where both parties are in fault, the loss will be divided.⁶

SECTION XLII. — APPORTIONMENT OF DAMAGES.

Where a collision was caused by the fault of two vessels, both are liable in damages to a third party.⁷

¹ *The Commerce*, 1 Black, 574; *Grace Girdler*, 7 Wall. 203; *Peck v. The Commander-in-Chief*, 1 Wall. 473. *Sanderson*, 17 How. 178.

² *O'Neil v. Sears*, 14 Law Rep. n. s. 731.

³ *Waring v. Clarke*, 5 How. 441; *Smith v. Condry*, 1 How. 28.

⁴ *Strout v. Foster*, 1 How. 92; *The Catharine v. Dickinson*, 17 How. 177.

⁵ *The Farragut*, 10 Wall. 334; *The S. B. Wheeler*, 20 Wall. 385; *The Gray Eagle*, 9 Wall. 505; *The Great Republic*, 23 Wall. 20; *The*

⁶ *The James Gray v. The John Frazer*, 21 How. 184; *Rogers v. The St. Charles*, 19 How. 108; *The Sapphire*, 18 Wall. 51; *The Morning Light*, 2 Wall. 550; *The Maria Martin*, 12 Wall. 43; *The Continental*, 14 Wall. 361; *Union S. S. Co. v. New York, &c. Co.*, 24 How. 307; *The Catharine v. Dickinson*, 17 How. 177.

⁷ *The D. S. Gregory*, 2 Ben. 226; *The Monitor and Hill*, 3 Biss. 25.

The owner of the injured vessel is entitled to compensation for loss or injury from either or both.¹

SECTION XLIII. — LIEN FOR DAMAGES.

The owner of the injured vessel has a lien on the offending vessel for the damages, equal in rank to the liens of material-men, bottomry, and others,² which it carries with it into whosoever hands it may come.³

¹ The *New Philadelphia*, 1 Black, 62; The *Washington and Gregory*, 9 Wall. 516.

² The *Rock Island Bridge Co.*, 6 Wall. 213.

³ The *China*, 7 Wall. 68.

CHAPTER V.

SEAMEN.

SECTION I. — THEIR RIGHTS AND OBLIGATIONS. WHO ARE SEAMEN.

For the rights and obligations of seamen, as regulated by statute, see U. S. Rev. Stat. §§ 4501-4612, inclusive.

For the right of seamen to claim salvage for service rendered to his own vessel, see *ante*, Chapter II., SALVAGE, Section II., and *Le Janet*, 3 Law Rep. 556 (London, 1872), Adm. & Ecc. And the crew are entitled to salvage of ships belonging to the same owner. The *Sappho*, 3 Law Rep. Adm. & Ecc. 142 (1872).

A seaman upon a schooner in the harbor of Frankfort, Michigan, where she was towed to receive a cargo of lumber, cannot refuse to work on Sunday, in loading the schooner, when the towing vessel is unable to enter the harbor by reason of an insufficiency of water, and is lying outside in the lake, awaiting the schooner, and in a place of danger.¹

The wages earned by a seaman, in the coastwise trade of the United States, are not subject to garnishment at the instance of the creditor of the seaman in an action at law.²

¹ *Smith v. Schr. J. C. King*, 111 Southern District, New York, 1880, Fed. Rep. 302. 4 Fed. Rep. 818. This is a very able

² *McCarthy v. Steam Propeller* decision by Benedict, D. J., and City of New Bedford, District Court, occupies some eighteen pages.

In suits for seamen's wages, interest is allowed from the time of the demand ; and if no demand is proved, then from the time of the commencement of the suit¹ brought in a State court.

By the United States Revised Statutes, § 4612, tit. liii. ch. 7, "Merchant Seamen," it is provided that, "In the construction of this title, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof ; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman ;' and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this title may be applicable ; and the term 'owner' shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong."

In the case of *Ah Hohn et als. v. Steamship Metapedia*, United States District Court, Eastern District of Louisiana, on the 28th of November, 1882, the following decision was rendered by Billings, J. : —

This is a suit instituted by subjects of the Empire of China against a British vessel. They were shipped at a port within the United States, namely, at San Francisco, for a voyage which was to occupy three years, and were to be discharged at Hong Kong. The whole question is, Does the statute of June 7, 1872, 17 Stat. p. 262 (R. S. at various sections, from section 4501-4612), apply to a British vessel ? The conclusion which I have reached is, that it does not. The act of June 7, 1872, is, in the provisions which relate to the shipping of seamen, a literal copy of the Merchant Shipping

¹ *Gammell v. Skinner*, 2 Gall. 45 ; *The Seaman's Friend*, by R. H. Dana, Jr. (13th ed.) 224.

Act, enacted by the Parliament of Great Britain in the year 1854.

In section 160 of the act of the Parliament of Great Britain (17 & 18 Vict. ch. 104, Digest of Statutes relating to Merchant Shipping, p. 102), it is enacted that British ships which engage seamen at any place out of her Majesty's dominions shall enter into the engagement with the sanction of the British officers, and according to that act of Parliament. In section 15 of the act of the Congress of the United States, vol. xvii. of Statutes at Large, p. 265, it is enacted *totidem verbis* that merchant-ships of the United States, who engage seamen at any place out of the United States, shall enter into the engagement with the sanction of the consular officers of the United States, and according to that act of the Congress. Such an adoption on the part of the United States in the year 1872 of a statute of Great Britain passed in the year 1854, such a coincidence in the legislation of the two nations, furnishes a guide to the courts of each, in the construction of these statutes, equivalent to a treaty stipulation; for it cannot be supposed that our government would copy the statute of England, and thereby, through its legislation, assert the supremacy of its laws in places, and under certain circumstances, in England, when it was not willing to concede an ascendancy to the laws of England in similar places, and under similar circumstances, within our own territory. These statutes, then, must be considered as a mutual concession that either nation, in shipping her seamen upon her merchant-vessels, was to follow her own laws, even when the shipping was effected within the territory of the other; and it would follow that the act of 1872 could not include in its operation British ships.

The structure of the statute of 1872 brings me to the same conclusion. The title of the statute is, "An Act to authorize the appointment of shipping commissioners by the several Circuit Courts of the United States to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen." The very title limits the action of the shipping

commissioners to a superintendence of the shipment on ships belonging to the United States. Now, the only thing complained of here is that there was no such superintendence.

But, again, section 65 of the act of 1872, p. 277 (section 4612 R. S.), enacts that, within the meaning and for the purposes of that act, a "master" is "a person having command of," and a "seaman" is "a person employed on board of," "a ship belonging to a citizen of the United States."

I think, therefore, the internal structure of the statute also shows that it was intended to operate only upon the manner of shipping crews upon our own vessels.

The case presented is of subjects of a foreign government invoking the jurisdiction of a court of the United States against a merchant-vessel of another foreign government. Independently of the statute of 1872, the case is without any circumstances which would require or allow this court to entertain jurisdiction (see the opinion rendered by this court *In re The Carolina*, in April, 1876), and that statute does not include this cause.

The decree, therefore, will be that the libel be dismissed.

All persons employed in the navigation of a vessel, or upon a voyage, other than the master and mates, are deemed seamen,¹ including cabin-boys, cooks,² stewards, chambermaids,³ carpenters, coopers, and firemen, pilots, surgeon and boatswain,⁴ the clerk of a steam-boat,⁵ all on board employed in the equipment or preservation of the vessel.⁶

SECTION II. — THEIR POWER TO CONTRACT.

Mariners may contract and bind themselves to the same degree as any other party on specific wages, and

¹ *The Highlander*, 1 Sprague, 588; *The Jane and Matilda*, 1 Hagg. Adm. Sumn. 170.

² *The Mentor*, 4 Mason, 84.

³ *Gurney v. Crockett*, Abb. Adm. 490.

⁴ *United States v. Thompson*, 1 Sumn. 170.

⁵ *The Sultana*, 1 Brown, 13.

⁶ *Turner's Case*, 1 Ware, 83.

for a specified time, or for a voyage, or a cruise,¹ at a specified rate of wages.²

Where no wages are stipulated, he may either prove by parol what wages were agreed on, or may, under the act of Congress, claim the highest rate payable at the port of shipment, within three months next preceding the date of the articles.³

The maritime law, as a general rule, requires seamen's contracts to be in writing.⁴

A penalty is prescribed by statute, for shipping seamen without written articles. See Rev. Stat. § 4521.

For the form of articles, see Rev. Stat. § 4612.

A voyage is a transit to be performed by the seamen;⁵ it is a technical phrase, and imports a definite commencement and ending.

For the penalty for omitting to begin voyage, see Rev. Stat. § 4522.

The maritime laws are peremptory, that the master shall perform the voyage stipulated in the shipping articles, and hold seamen discharged of their obligations to the ship if he deviates from it.⁶

A change of the original voyage is a deviation.⁷

The contract of each seaman is a distinct contract, although signed by several.⁸

It is presumed to include the law maritime, except as varied or modified by express stipulations;⁹ and the

¹ The Atlantic, Abb. Adm. 471; The Mona, 1 W. Rob. 137.

² The Atlantic, Abb. Adm. 471.

³ Montgomery v. Tyson, 1 Low. 131.

⁴ The Crusader, 1 Ware, 437. See Rev. Stat. §§ 4509-4523.

⁵ The Martha, Blatchf. & H. 156. See Rev. Stat. § 4511.

⁶ The Moslem, Olcott, 298.

⁷ Moran v. Baudin, 2 Pet. Adm.

⁸ Oliver v. Alexander, 6 Pet.

⁹ The Crusader, 1 Ware, 437.

court is bound to give it a construction most favorable to the seamen.¹

The owners cannot extinguish the claim of seamen for salvage, who have not appeared to claim their shares, by taking an assignment from them.²

SECTION III. — RIGHT TO DAMAGES AND WAGES.

Seamen are in general entitled to recover damages for an assault and battery by the officers.³

A mate, succeeding as master, does not lose his distinguishing character as mate.⁴

A mate who takes command of a vessel on the death of the master is entitled to wages for the entire voyage at the contract price as mate.⁵

He may sue in admiralty as mate, but at common law only for the extra compensation for acting as master.⁶

Seamen may contract for "lays" or shares on the venture.⁷

A stipulation for the payment at a certain rate will be carried out according to the intent of the parties.⁸

Where the articles provided for payment in United States currency, or its equivalent in gold at the current rate of exchange, the consul at a foreign port should allow a deduction of the difference between greenbacks and gold or silver, and the cost of exchange.⁹

When payable in foreign currency, they are to be paid in United States gold coin, according to the commercial value of the foreign currency.¹⁰

¹ *Goodrich v. The Domingo*, 1 Sawyer, 185.

² *The Adirondack*, 5 Fed. Rep. 214. See 2 Fed. Rep. 387, 872.

³ *Forbes v. Parsons, Crabbe*, 283.

⁴ *The George*, 1 Sumn. 157.

⁵ *The Fanny Gardner*, 5 Biss. 209.

⁶ *The Leonidas, Olcott*, 14.

⁷ *The Atlantic*, Abb. Adm. 451.

⁸ *Hathaway v. Jones*, 2 Sprague, 56.

⁹ *Seamen's Wages*, 18 Op. Atty.-Gen. 557.

¹⁰ *The Blohm*, 1 Ben. 228. And see *Wages payable in gold*, Rev. Stat. § 4548.

Where the master chartered the vessel at a fixed proportion of profits, and the fact was known to persons signing articles, or where no articles were signed, but the seamen looked to the master for their wages, the owners were not bound for their wages.¹

After abandonment on loss of the vessel, if accepted, the underwriters, as owners, are liable to the payment of the wages of the master and crew for the rest of the voyage.²

The rule that freight is the mother of wages is abolished.³

When the voyage is broken up, interrupted, or lost by any act of the master or owner, seamen are entitled to wages for the full voyage, or for damages in the nature of wages.⁴

Where seamen are discharged in a foreign port, they are entitled to three months' wages, whether their discharge took place at or before the termination of the agreement.⁵

When a seaman is unable to do his duty by reason of sickness, he is entitled to his whole wages.⁶

Where a vessel is sold in a foreign country, the master must pay into the hands of the consul three months' extra wages for the seamen.⁷

If a seaman be wrongfully discharged,⁸ or if he be compelled to desert by the cruelty of the master, he is entitled to full wages.⁹

¹ Packard v. The Louisa, 2 Woodb. & M. 48; Matter of McLellan, 6 Law. Rep. 440.

² Hammond v. The Essex F. & M. Ins. Co., 4 Mason, 200.

³ The Ocean Spray, 4 Sawyer, 105. And see Rev. Stat. § 4525.

⁴ The Ocean Spray, 4 Sawyer, 113.

⁵ The Hermon, 1 Low. 515.

⁶ Sims v. Jackson, 1 Wash. C. C. 416.

⁷ Montell v. United States, Taney, 24. And see Rev. Stat. §§ 4582, 4584. Hospital dues, see Rev. Stat. §§ 4586, 4587.

⁸ The Jerusalem, 2 Gall. 198.

⁹ Sherwood v. McIntosh, 1 Ware, 109. See Rev. Stat. § 4527.

In case of the death of a seaman during the voyage, wages are due up to the time of his decease.¹

Seamen are entitled to wages in case of shipwreck, if by their exertions remnants of the vessel are saved, although no freight be earned;² and notwithstanding the loss of the vessel, if a considerable part of the cargo be saved.³

A capture, unless followed by a condemnation, does not dissolve the contract; it is merely suspended, and on restoration it revives.⁴

The navy ration is the rule by which the allowance to seamen should be determined.⁵

Double wages are allowed to seamen by act of Congress, if the ship sails without the quantity of provisions specified in the act.⁶

The owners of the vessel are personally liable for the wages of the seamen, if the ship prove insufficient to pay them,⁷ although their names may not be stated in the shipping articles.⁸

A personal action lies against the master and owners immediately on a discharge of seamen, and costs may be awarded, although the action was brought before the ten days expired; but they may be denied if the suit appears vexatious.⁹

A pilot or engineer, unlicensed, cannot recover wages for services on a steam-vessel engaged in carrying passengers on the waters of the United States.¹⁰

¹ *Carey v. The Kitty, Bee*, 255. As to effects of deceased, see *Rev. Stat.* §§ 4538, 4541.

² *The Massasoit*, 1 *Sprague*, 97.

³ *Weeks v. The Catharina Maria*, 2 *Pet. Adm.* 424.

⁴ *Emerson v. Howland*, 1 *Mason*, 45.

⁵ *Sundry Mariners v. The Washington*, 1 *Pet. Adm.* 219.

⁶ *Foster v. Sampson*, 1 *Sprague*, 182.

⁷ *Carey v. The Kitty, Bee*, 255.

⁸ *Bronde v. Haven*, *Gilp.* 592. And see *Admiralty Rule* 18.

⁹ *The Susan*, 3 *Ware*, 222.

¹⁰ *The Maria, Deady*, 182. And see *Revised Statutes of the United States*, §§ 4441, 4442.

SECTION IV. — LIEN FOR WAGES.

A mariner is not bound to take any notice of the ownership of a vessel, nor to follow the estate of the owner into the probate court to collect his wages; ¹ his claim creates a lien on the vessel, the freight, and proceeds.²

It is a personal privilege, and is not assignable; ³ and, if reduced to a common-law judgment, it cannot be enforced.⁴

In the case of *Dennis Mahony v. The Lillie Laurie*,⁵ it was held that the claims of the seamen for wages earned upon voyages subsequent to the date of the salvage services are entitled to priority of payment by reason of that fact.⁶

The sale of the vessel by the master cuts off the lien.⁷

A justifiable sale divests all liens.⁸

All persons employed on a vessel to assist in the main purpose of the voyage are mariners, and included under the name of seamen,⁹ and have a lien for their wages.¹⁰

Third persons, who, at the master's request, have advanced the seamen wages, have the same right of lien; ¹¹ but an owner has not.¹²

¹ *The Fanny Gardner*, 5 Biss. 209.

² *The Thomas Jefferson*, 10 Wheat. 428. And see Rev. Stat. § 4535.

³ *Logan v. The Æolian*, 1 Bond, 267; *The Gate City*, 5 Biss. 200.

⁴ *The Gate City*, 5 Biss. 200; *Flaherty v. Doane*, 1 Low. 150.

⁵ Circuit Court, Eastern District of Texas, Dec. 3, 1880, Woods, Circuit Judge.

⁶ *The Paragon*, 1 Ware, 326;

Surplus of the Ship Trimountain, 5 Ben. 246; *The Hope*, 1 Aspinwall's Maritime Law Cases, 563; *Porter v. The Sea Witch*, 3 Woods, 75.

⁷ *The Amelie*, 6 Wall. 18.

⁸ *The Amelie*, 6 Wall. 18.

⁹ *Turner's Case*, 1 Ware, 83.

¹⁰ *The Ocean Spray*, 4 Sawyer, 105.

¹¹ *The W. F. Safford*, 1 Lush. 69.

¹² *The Janet Wilson*, 1 Swa. 261.

A suit for wages cannot be maintained until the contract is performed or released.¹

Seamen may be subjected to deductions from their wages for neglect of their duty.²

Where the master paid certain debts contracted by the crew, he is entitled to have the amounts deducted from their wages.³

A loss incurred by reason of the crime of a seaman may be set off.⁴

By section 4250 of the United States Revised Statutes, no canal-boat without masts or steam-power, which is required to be registered, licensed, or enrolled and licensed, shall be subject to be libelled in any of the United States courts for the wages of any person who may be employed on board thereof, or in navigating the same.

The exertions of judicial power in defence of the helpless have had the approval not only of Lord Stowell,⁵ but also of Lord Somers.⁶ In the United States they have had the high sanction of Chancellor Kent⁷ and of Mr. Justice Story.⁸

SECTION V. — WHO ARE MARINERS.

The term "mariner" includes all persons employed on board ships and vessels during the voyage, to assist in their navigation and preservation, or to promote the purposes of the voyage. Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin-boys,

¹ The Swallow, Olcott, 4.

⁶ Edwards v. Child, 2 Vernon,

² The Martha, Blatchf. & H. 157. 727.

³ The Coldstream, 4 Sawyer, 172.

⁷ 8 Kent Com. 193.

⁴ Thorne v. White, 1 Pet. Adm.

⁸ Abbott on Shipping (Am. ed.), 610, n.

173.

⁵ The Juliana, Ogilvie, 2 Dods. Adm. 504.

kitchen-boys, pilots, firemen, deck hands, waiters, — women as well as men, — are mariners.¹

To constitute a mariner, the services rendered by him must pertain to the business of navigation, and must be such as are necessary, or at least conducive, to the preservation of the vessel, or of those employed in her navigation.²

No suit in the admiralty could be maintained for wages by persons hired and employed as musicians on board a vessel.³

SECTION VI. — NATIONAL VESSELS.

The mariners of the public vessels of the nation cannot proceed against them in the admiralty, for the reason that the government or sovereign cannot be sued. It is not because the court has not jurisdiction, but because there is no right of action against the government or its property. In like manner, the mariners of a public vessel of a foreign power within our jurisdiction are not allowed to proceed against the vessel or officers. This is not because they are simply foreigners, but because, by the common law and universal consent of nations, the person, the ministers, and the vessels of a sovereign retain their independent character, and their consequent immunities, wherever they rightfully are, in times of peace.⁴

¹ Ben. Adm. § 278.

² 1 Conkling, 108.

³ *Trainer et al. v. The Superior*, Gilp. 514.

⁴ Ben. Adm. § 279.

CHAPTER VI.

MATERIAL-MEN.

SECTION I. — THEIR LIENS.

For the liens of material-men, see Chapter III., Section III.

The owners are *prima facie* liable for supplies,¹ subject, however, to rebuttal by evidence of credit having been given to others.²

The owner as well as the master is liable for repairs.³

SECTION II. — WHO ARE MATERIAL-MEN.

Under this general denomination are comprised all persons who furnish materials for the building, equipment, repair, outfit, or use of vessels employed in maritime navigation.⁴

SECTION III. — CONTRACTS.

Any contract made to equip, fit, or furnish a vessel after she is launched and afloat is a maritime contract.⁵

Work done in cleaning and scraping the hull of a vessel in the dry dock is not a maritime service.⁶

A contract to build a vessel is not a maritime con-

¹ Skolfield v. Potter, 2 Ware (Dav.), 396.

² Macy v. De Wolf, 3 Woodb. & M. 200.

³ Webb v. Pierce, 1 Curt. 112.

⁴ 1 Conkling's Adm. 73.

⁵ The Eliza Ladd, 3 Sawyer, 519.

⁶ Bradley v. Bolles, 1 Abb. Adm. 569.

tract, for it is a contract made on land and to be performed on land.¹

A contract to furnish the instruments or appurtenances to manage or propel the ship is not a maritime contract, when they are to be used in the construction thereof.²

A contract by a shipwright to repair a vessel is of a maritime nature, and cognizable in admiralty.³

A person who lends money for the purpose of repairing a vessel or of furnishing her with supplies, and which is actually employed for that purpose, is entitled to the same privilege against the ship as one who actually furnishes the supplies or performs the labor.⁴

The admiralty has no jurisdiction of an action by a broker or agent against the owner to recover a balance due for moneys advanced to pay bills due by the ship for repairs and supplies, for the contract is not maritime.⁵

A contract to furnish supplies to a vessel is a maritime contract, and cognizable in admiralty.⁶

The admiralty has jurisdiction over actions for supplies or materials furnished to foreign vessels.⁷

A party who makes repairs on a vessel in her home port, or furnishes materials or supplies to her, may proceed against the owner *in personam* in the admiralty to recover the amount.⁸

Admiralty has no jurisdiction of an action by a ship-

¹ People's Ferry Co. v. Beers, 20 How. 393; Roach v. Chapman, 22 How. 129; Edwards v. Elliott, 21 Wall. 532.

² Edwards v. Elliott, 21 Wall. 532.

³ Peyroux v. Howard, 7 Pet. 324; The St. Lawrence, 1 Black, 522.

⁴ Davis v. Child, 2 Ware, 78.

⁵ Minturn v. Maynard, 17 How. 477.

⁶ Zane v. The President, 4 Wash. C. C. 453.

⁷ The Sandwich, 1 Pet. Adm. 233.

⁸ Reppert v. Robinson, Taney, 492; The General Smith, 4 Wheat. 438; Peyroux v. Howard, 7 Pet. 324.

wright to recover for services in building a new boat on which some of the materials from an old dismantled boat have been used.¹

Supplies furnished in one State to a vessel belonging to another State are furnished to a foreign vessel lying in a foreign jurisdiction, the different States being for this purpose held foreign to each other.²

A proceeding *in rem* cannot be maintained in admiralty for repairs or supplies furnished to a vessel in her home port, unless the laws of the State give a lien therefor.³

SECTION IV. — SUITS BY MATERIAL-MEN.

By the twelfth Admiralty Rule of the United States Supreme Court, as promulgated May 6, 1872, in all suits by material-men for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master, or owner, alone *in personam*.

The claims of seamen for wages, and of material-men for supplies, where the parties were innocent of all knowledge of, or participation in, the illegal voyage, preferred to the claim of forfeiture on the part of the government.⁴

In the case of *The Brig Nestor*,⁵ Judge Story said: "If the libellant has given an exclusive personal credit to the master, he cannot afterwards, upon any change of circumstances or opinion, resort to the ship, or shift the responsibility over upon the owner. But *prima facie*

¹ *Smith v. The Royal George*, 1 Woods, 290.

² *The Lottawana*, 21 Wall. 558.

³ *The St. Jago de Cuba*, 9

⁴ *The Chusan*, 2 Story, 455; *Wheat*, 110.

Whitlock v. The Thales, 20 How. Fr. 447.

⁵ 1 Sumn. 75.

the supplies of material-men to a foreign ship — that is, to a ship belonging, or represented to belong, to owners resident in another State or country — are to be deemed to be furnished on the credit of the ship and the owners, until the contrary is proved.”

A suit *in personam* against the owner of a vessel for supplies cannot be maintained in the admiralty, where the owner gave a negotiable promissory note for the debt, which has not been given up or tendered at the hearing.¹

The giving credit for a fixed time for the supplies does not extinguish the lien for the supplies; nor the allowing the ship to depart from the port on her voyage without payment.²

¹ Ramsay v. Allegre, 12 Wheat. 395.

² The Brig Nestor, 1 Sumn. 73.

CHAPTER VII

OF PRACTICE AND PLEADING.

SECTION I. — PROCEEDINGS TO RECOVER.

THERE is no rule in the United States as regards admiralty practice, such as Rule 90 of the United States Supreme court for the courts of equity in the United States, which adopts the practice of the High Court of Chancery in England as furnishing just analogies to regulate the practice where the rules prescribed by the Supreme Court or by the Circuit Court do not apply.

After a judgment has been rendered in favor of a party having a claim upon the *residuum* in the registry, it is brought to the notice of the court that an equitable action of nullity has been instituted in a State court to annul the transfer by which said party held title to the claim, on the ground of fraud and simulation, the court of admiralty will order the proceedings in execution of its judgment to pause until the termination of the suit in equity in the State court.¹

The right of recovery in salvage cases is a mere right to proceed against the thing saved, and not a personal claim against the owner, unless he has, by taking possession, thereby rendered himself personally liable for the reward.²

¹ The *Albert Schultz*, 12 Fed. Hornor, Esq., of the New Orleans Rep. 156, by Billings, D. J., April Bar).

11, 1882 (reported by Joseph P. ² The *Independence*, 2 Curt.

There is no precedent for a suit in a common-law court for salvage on the high seas;¹ no action lies at law, unless the salvor can prove a contract with the owner or agent.²

An action cannot be maintained against the master, unless it was for his benefit.³

Proceedings to recover.— Salvage proceedings may as well be by proceedings *in personam* as by proceedings *in rem*.⁴

Any person having an interest in the property proceeded against may appear and defend. Mortgagees⁵ of a ship, assignees of a bankrupt owner,⁶ underwriters who had accepted the abandonment of insured property,⁷ and seamen whose wages might be affected by the proceedings, have been held entitled to appear.⁸

Persons whose interest is merely collateral, and who have no interest in the subject-matter of the proceedings, are not allowed to intervene.⁹

An action will not lie for the salvage of goods on land;¹⁰ but compensation may be obtained for services rendered within the ebb and flow of the tide, without regard to location, whether on the high seas or *inter fauces terre*.¹¹

356; *The Emblem*, 2 Ware, 61; *The Centurion*, 1 Ware, 479; *The Trelawney*, 3 C. Rob. 216; *The Hope*, 3 W. Rob. 215.

¹ *Brevoor v. The Fair American*, 1 Pet. Adm. 187.

² *Lipson v. Harrison*, 24 Eng. L. & Eq. 208.

³ *Miller v. Kelly*, Abb. Adm. 564.

⁴ *The Boston*, 1 Sumn. 329; *The Trelawney*, 3 C. Rob. 216; *The Hope*, 3 C. Rob. 215; *Harley v. Gawley*, 2 Sawyer, 10; *The Louisa Jane*, 2 Low. 295.

⁵ *The Julinder*, 1 Spinks, 71.

⁶ *The Dowthorpe*, 2 W. Rob. 73.

⁷ *The Regina del Mare*, B. & L. 315; *The Cargo ex Galam*, B. & L. 167.

⁸ *The Union*, Lush. 128.

⁹ *The Killarney*, Lush. 427; *The Dowthorpe*, *ubi supra*. As to the practice where there are several claimants, see *The Clara*, Swa. 1; *The William Hull*, Lush. 25.

¹⁰ *Ex parte Cahoone*, 2 Mason, 88; *Nicholson v. Chapman*, 2 H. Black. 254.

¹¹ *The John Gilpin*, Olcott, 82;

The pendency of one suit for salvage is not a bar to another suit by other salvors for other services.¹

That the libellants would not refer their claim for salvage, as agreed, is no bar to the suit ;² and, if separate libels are filed, they may be consolidated by the court for its own convenience.³

The more recent practice has been not to force consolidation, where the parties object to it, and maintain that their interests are different. See *The Jacob Landstrom*, *The Law Reports*, Probate Division, vol. iv. p. 193 (Dec. 17, 1878).

Where several actions are consolidated, the costs in each action will be taxed up to the time of consolidation. After that time only one suit will be recognized, and a single bill of costs allowed to the prevailing party.⁴

It is the duty of the salvors, on bringing suits, to make all co-salvors parties, that one final decree may be had;⁵ but they are not deprived of their remedy because other salvors will not join;⁶ they may petition the court for compensation out of the funds in the registry.⁷

The interest of co-salvors is several, and seamen may bring actions against the master for their shares.⁸

They may bring action against the property saved, if settlement was made with the master without their consent.⁹

The Emulous, 1 Sumn. 210; *American Insurance Co. v. Coster*, 3 Paige, 323; *Hobart v. Drogan*, 10 Pet. 108; *United States v. Coombs*, 12 Pet. 72.

¹ *The Merrimac*, 1 Ben. 68.

² *Coffin v. The John Shaw*, 1 Cliff. 230.

³ *Rich v. Lambert*, 12 How. 347; *The London Merchant*, 3 Hagg. Adm. 394; U. S. Rev. Stat. §§ 921-978; *United States v. Union Pacific R. R. Co.*, 98 U. S. 569.

⁴ *Simpson v. Caulkins*, 1 Abb. Adm. 539.

⁵ *The Hessian v. The Edward Howard*, Newb. 522; *The Boston*, 1 Sumn. 328.

⁶ *The Blackwall*, 10 Wall. 12; *Evans v. The Charles*, Newb. 329.

⁷ *The Blackwall*, 10 Wall. 12; *The Henry Ewbank*, 1 Sumn. 400.

⁸ *The Centurion*, 1 Ware, 477.

⁹ *The Britain*, 1 W. Rob. 40; *The Sarah Jane*, 2 W. Rob. 110.

A foreign consul may petition for the payment into the registry of the proceeds of a sale of property libelled for salvage, where absent citizens of his country are interested.¹

A purchaser of a ship liable to be restored after capture cannot bring a claim for salvage.²

A delay to enforce a maritime lien, after a reasonable opportunity to do so, should be deemed a waiver of the lien, as against subsequent purchasers or incumbrancers, in good faith and without notice, unless such delay is satisfactorily explained.³

Notwithstanding Admiralty Rules 54-57, the owner of a vessel may institute appropriate proceedings in a court of competent jurisdiction to obtain the benefit of the limitation of liability provided for by sections 4284 and 4285 of the Revised Statutes, without waiting for a suit to be begun against him or his vessel for the loss out of which his liability arises.⁴

This is not available, except in actions in the courts of the United States under the statute.⁵

The practice of the court does not authorize the dismissal of a libel for the libellant's delay in bringing the cause to a hearing after issue joined. The claimant has an equal right to move the case.⁶

¹ *The Adolph*, 1 Curt. 89; *Rowe v. Brig —*, 1 Mason, 372; *The Invincible*, 1 Wheat. 238; *The Ann*, 3 Wheat. 435; *The Divina Pastora*, 4 Wheat. 52; *The Bee*, 1 Ware, 335; *The Henry Ewbank*, 1 Sumn. 400; *The Bello Corrunes*, 6 Wheat. 152.

² *Conlon v. The Neptune*, 2 Pet. Adm. 358; *Warder v. La Belle Creole*, 1 Pet. Adm. 31.

³ *In re Dubuque*, 2 Abb. (U. S.) 33. See *Packard v. The Louisa*, 2 Woodb. & M. 48; *Blaine v. The*

Charles Carter, 4 Cranch, 328; *The Utility*, 1 Blatchf. & H. 218; *The Lillie Mills*, 1 Sprague, 367; *The Chusan*, 2 Story C. Ct. 456, 468; *The Buckeye State*, 1 Newb. 11; *The Lauretta*, 9 Fed. Rep. 622.

⁴ *Ex parte Slayton*, S. C. U. S., October Term, 1881; *Am. Law Reg.* August, 1882, vol. **xxi**. No. 8, p. 543.

⁵ *Abbott's Trial Evidence*, 576 (New York, 1882).

⁶ *The Mariel*, 6 Fed. Rep. 831.

While the admiralty courts are not governed by any statute of limitations, they adopt the principle that *laches* or delay in the judicial enforcement of maritime liens will, under proper circumstances, constitute a valid defence.

When an admiralty lien is to be enforced to the detriment of a purchaser for value, without notice of the lien, the defence will be held valid under shorter time and a more rigid scrutiny of the delay than where the claimant is the party who owned the property when the lien accrued.¹

The arrest of a vessel after her voyage is commenced is illegal, and will be discharged.²

On a petition for a writ of prohibition to the District Court proceeding as a court of admiralty and maritime jurisdiction, matters *dehors* the record, which are set forth in the petition for the writ, cannot be considered here.³

For further as to prohibition and *mandamus*, see Federal Practice, by Field & Miller, 203, 204; Bump's Federal Procedure, 276-281; Desty's Federal Procedure, p. 92, § 688, and the cases there cited; Myer's Index to the Reports of the Supreme Court of the United States, "Writ of Prohibition," p. 535, and his pages 290-294, for "*Mandamus*;" and Rapalje's Digest of Federal Decisions and Statutes for *mandamus*, pp. 349, 350, and for prohibition, p. 605.

Where "The H. W." instituted a cause of damage *in rem* in Ireland for collision against "The C. C.," and caused her to be arrested in Ireland, "The C. C." obtained her release on bail, and instituted a cross-suit against "The H. W."

¹ The Key City, 14 Wall. 653. vii. 284, Boston, 1879; 24 Moak's

² Boysson v. Carlberg (House of Notes, 847, 848.
Lords, July 9, 1878), L. R. 3 Ap. * *Ex parte* Easton, 95 U. S.
Cas. 1316, 1322; The Reporter, vol. (5 Otto) 68.

Subsequently "The C. C." was arrested in England at the suit of the owners of "The H. W.," in respect of the same collision.

The court ordered the vessel to be released and all proceedings to be stayed.¹

Interest on a salvage award is recoverable from the date of the judgment.²

After the payment of salvage by a surety in a stipulation bond, if the owner of the goods claims and receives for the loss as ascertained by the decree, or directs payment to be made, it is a presumption of satisfaction on the adjustment of average.³

The court may determine to whom the residue of the property shall be delivered, and may decide whether a capture by a foreign nation is valid.⁴

Salvage was awarded in a case where both vessels belonged to the same owner.⁵

A claim for salvage may be maintained in a court of admiralty, if there is no local custom making the service gratuitous.⁶

SECTION II.—FORMS AND MODES OF PROCEEDING.

By the Revised Statutes of the United States, § 913, it is provided that—

The forms of mesne process, and the forms and modes of proceeding in suits of equity and of admiralty and maritime jurisdiction in the Circuit and District Courts, shall be ac-

¹ The *Catterina Chiazzar*, 1 P. Robinson v. George's Insurance Co., D. 368; 2 Law Reports Digest, 17 Me. 131.

1865 to 1880 (London, 1882), p. 2915. ⁴ *McDonough v. Dannery*, 3 Dall. 188.

² The *Jones Brothers*, 46 L. J. Adm. Div. 75; Fisher's Annual Digest (London, 1878), p. 377. ⁵ *P. M. S. S. Co. v. Bales of Gunny Bags*, 3 Sawyer, 187.

³ *Eckford v. Wood*, 5 Ala. 136; ⁶ *Fifty Thousand Feet of Timber*, 2 Low. 64.

cording to the principles, rules, and usages which belong to courts of equity and of admiralty, respectively, except when it is otherwise provided by statute or by rules of court made in pursuance thereof; but the same shall be subject to alteration and addition by the said courts, respectively, and to regulation by the Supreme Court, by rules prescribed from time to time, to any Circuit or District Court, not inconsistent with the laws of the United States.

For the construction of this section 913 see the following: Independent of State legislation;¹ forms and modes of process,² of procedure;³ rules of pleading,⁴ of practice.⁵

By the Revised Statutes of the United States, § 917, it is provided that —

The Supreme Court shall have power to prescribe, from time to time, and in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering, and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice, to be used, in suits in equity or admiralty, by the Circuit and District Courts.⁶

By the Revised Statutes of the United States, § 918, it is provided that —

¹ *Wayman v. Southard*, 10 Wheat. 1; *Beers v. Haughton*, 9 Pet. 359; *The Delaware*, *Olcott*, 240.

² *Grayson v. Virginia*, 3 Dall. 320; *Bank of United States v. Halstead*, 10 Wheat. 51.

³ *Manro v. Almeida*, 10 Wheat. 473; *Ex parte Crane*, 5 Pet. 210; *Harrison v. Nixon*, 9 Pet. 507.

⁴ *McKinlay et al. v. Morrish et al.*, 21 How. 343.

⁵ *Duncan v. United States*, 7 Pet. 435.

⁶ *Wayman v. Southard*, 10 Wheat. 1; *Poultney v City of Lafayette*, 12 Pet. 472; *The Steamer St. Lawrence*, 1 Black, 522; *Noonan v. Lee*, 2 Black, 509; *Goodyear v. Providence Rubber Co.*, 2 Cliff. 351; *Gray v. Chicago, &c. R. R. Co.*, Wool. 63; *Jenkins v. Greenwald*, 1 Bond, 126; *Gaines v. Travis*, 1 Abb. Adm. 422.

The several Circuit and District Courts may, from time to time, and in any manner not inconsistent with any law of the United States, or with any rule prescribed by the Supreme Court under the preceding section, make rules and orders directing the returning of writs and processes, the filing of pleadings, the taking of rules, the entering and making up of judgments by default, and other matters in vacation, and otherwise regulate their own practice as may be necessary or convenient for the advancement of justice and the prevention of delays in proceedings.¹

SECTION III. — PLEADING.

A suit in the court of admiralty may be either *in personam* or *in rem*. Salvage suits are almost invariably of the latter class.

The case is commenced in the courts of the United States, not by filing in the registry of the court the *præcipe* to institute, as in England, but by filing a libel in the clerk's office. By Rule 1 of the United States courts in admiralty no mesne process shall issue until the libel is filed in the clerk's office. See Appendix, and authority there cited.

What the libel should state, how it shall propound the allegations, the prayer, and interrogatories, may be seen by reference to Rule 23 in Admiralty. See Appendix, and authorities there cited.

Against what and whom suits for salvage may be instituted, see Appendix, Admiralty Rule 19, and the following decisions.

¹ Bank of United States v. Wheat, 43; Mills v. Bank United White, 8 Pet. 262; Beers v. Haughton, 9 Pet. 329; Poultney v. City of St. Lawrence, 1 Black, 522; Louisiana Insurance Co. v. Nicholson, 12 Pet. 472; Philadelphia, &c. R. R. v. Stimpson, 14 2 Low. 310. Pet. 448; Wayman v. Southard, 10

As to joinder of proceedings, the nineteenth Admiralty Rule was intended to prevent a joinder of proceedings *in rem* and *in personam*, in the same libel for the salvage of the same goods.¹

This decision of the Circuit Court affirmed the decision of the judge of the United States Court for the District of Louisiana, and was affirmed by the Supreme Court in *The Sabine*, 11 Otto, 101.

As only exceptional provision is made by the Supreme Court rules in admiralty for a joint libel, the general rule that proceedings *in rem* and *in personam* cannot be joined in the same libel must be considered as receiving the sanction of the Supreme Court.²

As to joinder by libellants, all persons entitled on the same state of facts to participate in the same relief may join as libellants, whether the suit be *in personam* or *in rem*.³

Misjoinder of parties libellant, when not objected to, will not prevent a decree.⁴

The pleadings in the United States District Court consist of the libel, claim, answer, exception, and cross-libel.

By Admiralty Rule 51 no replication is allowed. I have therefore furnished no form of it.

Stipulation. — For the practice, release upon stipulation without formal claim, neglect to name owners, liability of stipulators, sufficiency of answers, authority

¹ *Nott v. The Steamboat Sabine and Cargo*, 2 Woods, 211, by Bradley, Circuit Justice.

² *Ferris v. Steam-tug Alida*, The Reporter, vol. xiii. No. 22, p. 677 (Boston, 1882).

³ *Fretz v. Bull*, 12 How. 463.

⁴ *Coast Wrecking Co. v. Phoenix Insurance Co.*, 7 Fed. Rep. 236 (1881).

of consignee or agent, see *Todd v. Bark Tulchen*, 2 Fed. Rep. 600.

For the form of a stipulation for costs, and affidavit of surety, see Appendix.

The surety must justify by affidavit.

The stipulation may be acknowledged before the judge, the clerk, or a United States commissioner. When the libel and stipulation are filed with the clerk, he issues admiralty process.

The process here spoken of is a warrant, when the libel is *in rem* to arrest the *res*.

When the *res* is arrested, the marshal publishes a monition; for the form of which see Appendix.

The party who wishes to release the property must, by Rule 26 in Admiralty, file a sworn claim; for the form of which see Appendix, and authority there cited.

For bonds or stipulations, see Admiralty Rule 5, Appendix, and authorities there cited.

As to bailing property in vacation, see United States Revised Statutes, § 940, Appendix.

For stay of execution, or discharge of property on delivery bond, where the amount claimed is stated in the libel, see United States Revised Statutes, § 941, Appendix.

By Admiralty Rule 10 of the United States Supreme Court, perishable goods may be sold or delivered to claimant on the terms presented by that rule. See Appendix, and authorities there cited.

In like manner a ship may be delivered to claimant on complying with the requirements of Rule 11 of the United States Supreme Court in Admiralty, or a sale may be ordered. See Appendix, Admiralty Rule 11, and authorities there cited.

The default or failure to answer is regulated by Admiralty Rule 29. See Appendix, and authority there cited.

But before the return-day the defendant should file his claim and answer, or exceptions, made and verified as required by Admiralty Rule 27. See Appendix, and authorities there cited.

As to what allegations need not be answered, see Admiralty Rule 31, Appendix.

Exceptions to the libel may be taken under Admiralty Rule 36. See Appendix, and authorities there cited.

If exceptions to a libel are not brought to the attention of the Circuit Court, nor referred to, either expressly or by implication, in the appeal, they will be deemed to be conclusively waived by the respondent when he is the appellant. To consider them would be to exercise the appellate power in reviewing the action, not of the Circuit, but of the District Court. This cannot be done.¹

If no exception is taken to the report of a commissioner, which is duly confirmed by the Circuit Court, the matter is not open for review, there being nothing on its face impeaching its correctness.²

As to non-appearance of libellant and dismissal of his suit, see Admiralty Rule 39, Appendix.

By Rule 53 of the United States Supreme Court in Admiralty (December Term, 1868, 7 Wall. v) cross-libels may be filed on any counterclaim.

For the effect of cross-libels, see said Rule 53, in the Appendix.

Upon a libel *in rem*, filed for damages caused by a

¹ The Vaughan, 14 Wall. 258. Vanderbilt, 6 Wall. 225; Jennings

² The Virgin, 8 Pet. 538; The v. The Perseverance, 3 Dall. 336.

collision, a cross-libel cannot be sustained for salvage on account of services rendered to the injured vessel after the collision. Such a claim does not arise out of the cause of action on which the libel is founded, within the meaning of the fifty-third rule.¹

The decree of a District Court, dismissing a cross-libel for want of merit, from which no appeal was taken, determines the question raised by such cross-libel, but does not dispose of the issue of law or fact involved in the original suit.²

Where a libel was filed against a steamer by a barque, and the owners of the steamer filed a cross-libel against the barque, and moved to stay proceedings in the suit under the first libel until security was given on the cross-libel, no process having been issued on the cross-libel, it was held that the Supreme Court did not intend by this rule to give the court jurisdiction of the second libel without a seizure of the barque within the district, but that the object of that rule is to compel appearance, and giving security by a respondent in a cross-libel *in personam*, in causes where it does not appear proper to relieve him.³

The fifty-third Rule in Admiralty, requiring the respondents in a cross-libel to give security to respond in damages as claimed in the cross-libel, applies as well to actions *in rem* as to those *in personam*.⁴

When Claims do not arise from same Cause of Action.— Upon a libel *in rem*, filed for damages caused by a collision, a cross-libel cannot be sustained for salvage on

¹ Crowell v. Schooner Theresa Wolf, 4 Fed. Rep. 152 (1880), reported by Frank P. Prichard, Esq., of the Philadelphia Bar.

² The Dove, 91 U. S. (1 Otto) 381.

³ The Bristol, 4 Ben. 55. And see The Sapphire, 18 Wall. 51; Ward et al. v. Chamberlain et al., 21 How. 572.

⁴ The Toledo, 1 Brown Adm. & Rev. Cases, 445.

account of services rendered to the injured vessel after the collision. Such a claim does not arise out of the cause of action on which the libel is founded, within the meaning of the fifty-third Admiralty Rule.

It is not the office of a cross-libel to enforce a new subject-matter introduced into the litigation by strangers to the original suit, and thus create a new liability.¹

Libellant may except to the answer, as provided by Admiralty Rule 28 of the United States Supreme Court. See Appendix, and authority there cited.

Amendments are regulated by Rule 24 of the United States Supreme Court in Admiralty. See Appendix, and authorities there cited.

I cannot "condense this book into an easily portable and purchasable compass" (as I state in my Introduction) if I quote all the decisions which I have collected. Therefore, for the authority as to amendments beyond what I cite in the Appendix, I refer the reader to an elaborate work on Federal Procedure, by Orlando F. Bump, Baltimore, 1881, at pp. 667-669, 673, 674.

We may refer to the following decisions as to pleadings:—

The pleadings in admiralty are more simple and less technical than in a court of common law.²

In all admiralty proceedings the decree must be *secundum allegata et probata*.³

Such also is the English rule. The court will insist upon an adherence to the rule proceeding *secundum allegata et probata*, and a party who fails to establish the case set up in his pleading will not be allowed to take

¹ The *Ping-On v. Blethen and mours & Co. v. Vance et al.*, 19 Others, 11 Fed. Rep. 607 (1882). How. 162.

² *West v. Steamer Uncle Sam*, ³ *The Schooner Boston and 1 McAllister*, 505; *Dupont de Ne-Cargo*, 1 Sumn. 331.

the benefit of another state of facts, which may turn up on the evidence.¹

In *Dupont de Nemours & Co. v. Vance et al.*² the court said : —

The rules of pleading in the admiralty are exceedingly simple and free from technical requirements. It is incumbent on the libellant to propound with distinctness the substantive facts on which he relies ; to pray, either specially or generally, for the relief appropriate to them ; and to ask for such process of the court as is suited to the action, whether *in rem* or *in personam*.

It is incumbent on the respondent to answer distinctly each subsequent fact alleged in the libel, either admitting or denying, or declaring his ignorance thereof, and to allege such other facts as he relies upon as a defence, either in part or in whole, to the case made by the libel.

The proofs of each party must correspond substantially with his allegations, so as to prevent surprise. But there are no technical rules of variance or departure in pleading, like those in the common law, nor is the court precluded from granting the relief appropriate to the case appearing on the record, and prayed for by the libel, because that entire case is not distinctly stated in the libel.

In *Bayard v. Malcolm*,³ Chief Justice Kent said : “The established principles of pleading, which compose what is called its science, are rational, concise, luminous, and ought, consequently, to be very carefully touched by the hand of innovation.”

¹ The Peerless, Lush. 103. See of Cases, 376; The Aurora, 1 W. The Dispatch, Lush. 98; The Lothian, Rob. 322; The Anne and Jane, 2 W. Lush. 241; The Bothnia, Lush. Rob. 98; The Hebe, 2 W. Rob. 146; 52; The George Arkle, Lush. 222; The Glasgow Packet, 2 W. Rob. 306; The Virgil, 2 W. Rob. 201-204; The North American, Swa. 358; The Speed, 2 W. Rob. 225-227; The Schwalbe, Swa. 521; The Haswell, B. & L. 247; The Amalia, B. Ironmaster, 6 Jur. n. s. 782; The & L. 311; The Laurel, B. & L. 191; Clarence, 1 Spinks, 206; The Sylph, L. R. 2 Adm. 24.

² 19 How. 171.

³ 1 Johns. (N. Y.) L. R. 471.

And the advantage of an orderly, not to say scientific, system of administration is as apparent in the courts of admiralty, and mischiefs of uncertainty or inexactness are as positive there, as in any other tribunals. Such seems to have been the opinion of Justice Story.¹

In *McKinlay et al. v. Morrish et al.*,² the United States Supreme Court held that the rules of pleading in admiralty must be strictly complied with. On page 347 the court "warn the profession that the irregularity of pleadings in admiralty, now too frequently occurring, have attracted our attention, and will be treated hereafter according to the rules and practice for pleadings and proofs in admiralty cases."

SECTION IV. — OF TENDER.

In practice, when claimant admits a certain sum to be due, and desires to save further costs, it is safest to make a tender, in lawful money of the country, to the libellant, of the amount which claimant admits that he owes, and contends that he owes no more. This sum must include all costs to date of tender, if admitted to be also due. If the tender be accepted, the matter may be settled out of court.³

If the claimant does not intend to include in the tender an offer to pay costs up to the time, he should state that the tender relates only to the demand of libellant, and specify the grounds upon which costs are not tendered, referring that question to the consideration of the court.⁴

¹ The Boston, 1 Sumn. 323.

² 21 How. 343.

³ Williams & Bruce, Prac. (English), 258, n.

⁴ The Hickman, L. R. 3 Adm. 15, 19. See also, as to costs in cases of tender, The John, Lush. 11; The Sovereign, Lush. 85; The

If the tender be refused by libellant, the claimant may deposit the amount admitted to be due in the registry of the court, and obtain a receipt therefor.

The money remains idle in the hands of the registrar until the end of the suit.¹

The defendant must plead the tender, and the court decides upon the sufficiency of the amount; and if it holds it to be sufficient, it may either condemn the plaintiff in costs, or refuse him his costs.²

Notwithstanding respondent in a cause of salvage makes a tender which is adjudged sufficient, yet, if it is not so liberal but that the salvor might reasonably prosecute the suit in expectation of obtaining a larger award, the court has power, in the exercise of a sound discretion, to allow him costs of proceedings after the tender. But the general rule is, that a sufficient tender throws after-costs on libellant.³

The court will not order the money of suitors to be put out at interest, except upon a joint application of a plaintiff and defendant.⁴

It is said that the strict doctrine of the common law, in relation to the manner in which a tender should be made, and the production of the money, even when the offer of payment is rejected, is not recognized in the admiralty courts.⁵

In *Papayanni & Co., Owners of The Thessalia, v.*

Hope, 2 W. Rob. 9; *The Mobile*, 117-125; *The William*, 5 Notes of Swa. 256; *The Cargo ex Honor*, Cases, 108; *Abbott on Shipping*, L. R. 1 Adm. 87; *The Frederick*, 1 part iv. ch. 12, p. 574.

Hagg. 211; *The Eleanora Charlotte*, ³ *Lubker v. The N. H. Quimby*, 1 Hagg. 159; *The Hedwig*, 1 8 Reporter, 806.

Spinks, 19.

⁴ *Coote's Admiralty Practice* (2d ed., London, 1869), p. 121.

¹ *The Annie Childs*, Lush. 509.

² *The Vrouw Margaretha*, 4 C.

Rob. 103; *The Clifton*, 3 Hagg. p. 103.

⁵ *Dunlap's Admiralty Practice*,

p. 103.

W. H. Tindall & Co., Owners of The Yorkshire,¹ Sir R. J. Phillimore, in delivering judgment, said : —

The value of the "Thessalia" is estimated at £90,000, — £30,000 the ship, and £60,000 the cargo; and the value of the "Yorkshire" is £42,231. Now, for this service £1,200 has been tendered and paid into court. The question which I have to decide is, whether, looking to all the facts of the case, and applying the principle of law to those facts, that sum is adequate for the services rendered. I think it impossible to doubt that, at the time the services were rendered, the "Yorkshire," with her cargo, was in a condition of considerable danger; she was unmanageable, and her captain was sensible of her difficulties, and sought assistance. A slight and unfavorable change in the weather would have put her in a position of great peril, from which she was relieved by the timely assistance of the "Thessalia." It is true that two large vessels cannot come together without considerable peril to each other, particularly when they are screw steamers, by the breaking of the hawser, or by its becoming entangled with the screw. It required no ordinary skill on the part of the "Thessalia" to avoid that danger; and it has been justly said by the master of the "Yorkshire," in his letter to the master of the "Thessalia," wherein he expresses his admiration for the superior skill displayed, that he saved the lives of the crew of the "Yorkshire" and the property; and that must be taken into consideration, with the other facts of the case, in coming to a conclusion. I think that £1,200 is inadequate, and I shall increase it by £400. I take into consideration, in making the award, that there was a danger beyond the ordinary perils of such service, and that the ship itself was placed in great peril. The award will be £1,600, to cover all expenses.

SECTION V. — RULE 10 IN ADMIRALTY.

In addition to the cases cited in the Appendix on Rule 10 of the United States Supreme Court in Ad-

¹ Mitchell's Maritime Register (London, Jan. 23, 1880), p. 114.

miralty, I state the following instance of sale, by order of court, of goods perishable, or liable to deterioration, decay, or injury, by being detained in custody pending the suit, the proceeds of which were ordered to be brought into court to abide the event of the suit.

In the case of the New Harbor Protection Company *v.* Ship Tornado, Cargo and Freight, in the United States District Court for the District of Louisiana, No. 11,207 (unreported), the libel for salvage was filed 27th February, 1878. On the next day the proctor for libellants filed a motion in writing, suggesting that the whole cargo, then being discharged from the ship, was greatly damaged by water, and some of it by fire, and some of it by fire and water, and would in all probability have ultimately to be sold, being in unfit condition to be sent to destination. An order of court was thereupon rendered by Billings, J., on said motion, directing the sale of the cargo to be made by the marshal upon the levee, as it came out of the ship, on two days' advertisement, in such lots as might accumulate from day to day. On the same day, February 28, an application was made by the master of the ship, in which he represented that he was desirous and entitled to bond said ship and cargo, and asked for a rule upon the libellants to show cause on the next day (March 1) why said order to sell said cargo should not be rescinded, and the claimant, said master, be allowed to bond said cargo.

On March 1, said rule came on for hearing before said court. The proctor for libellant and a proctor representing the insurers of the cargo appeared and resisted the rescinding of the order. Proctors also appeared for the said master and claimant, and the mover

of the rule to rescind. On the trial of the rule, witnesses were examined orally before the judge. Evidence was also taken by order of the court in relation to the condition of said cargo, and whether the same was or was not a total loss.

On the 5th of March, 1878, and before the District Court had made any decision or order on said rule to rescind the order for sale of said cotton, a proctor, representing the underwriters for Lloyd's, by leave of the court, filed an intervention for the interest of the insurers for the freight on said cargo, in which intervention it was prayed that the said order for the sale of said cargo be rescinded.

On the 6th of March, 1878, after consideration of said rule taken by the master of the ship to rescind said order of sale, and the evidence and arguments thereon, and of the said intervention, and of affidavits and briefs submitted therewith, the court ordered that the said master and claimant be allowed to bond the ship, and such of the cotton as was then stored and in good order, amounting to five hundred and twenty-three bales, and that the remainder of the cargo on board the ship, or upon the levee, which was more or less damaged, be sold by the marshal, after three days' notice; and all questions of freight were reserved by the court. A cotton factor of high standing was appointed a Trinity master, to advise and assist in making sale of the cotton, and as appraiser. The gross proceeds of the sale of the damaged cotton amounted to \$116,000, and the Trinity master, who also acted as appraiser, was allowed a reasonable fee for his services.

This appointment resulted in benefit to all parties in interest. The aid of the experienced merchant selected as Trinity master and appraiser augmented the sum

produced by the sale far above the amount of compensation allowed to him by Billings, J.

SECTION VI. — PRACTICE IN CRIMINAL CASES.

The practice of the admiralty, in criminal cases, is the same as the practice of the courts of common law in like cases. They are tried before a jury.

The practice of the State courts is not adopted, but is according to the usage of admiralty courts, subject to the limitations of the Constitution, the amendments, and the acts of Congress. Ben. § 572. See also the excellent treatise by Alfred Conkling, Esq. (4th ed., 1864), on the Organization, Jurisdiction, and Practice of the Courts of the United States, Part IV. ; and see a Manual of Practice in the Circuit Courts of the United States, by Augustus A. Boyce, Albany, 1869, p. 92, ch. 5.

An injunction to stay proceedings in the admiralty court, in a suit for the condemnation of a ship, has been refused, when it appeared that the court of admiralty, by its own rules, had as large an authority as the court of chancery to put the subject into a method of inquiry, and to act upon that inquiry by giving the same relief.¹

But if the proceedings in the admiralty court are in that stage in which no new evidence can be received, as if a sentence has been obtained and an important fact has since been discovered, the court of chancery will restrain proceedings to enforce that sentence.²

¹ Anon., 3 Atk. 350.

& J. 446-454; 3 Daniell Ch. Pl. &

² Jarvis v. Chandler, T. & R. Pr. 1729 (3d Am. ed., Perkins).

819. See *Leycester v. Logan*, 3 K.

CHAPTER VIII.

EVIDENCE.

SECTION I. — GENERAL RULES.

THE rules of evidence in admiralty cases are, generally, the same as in other cases, except so far as modified by acts of Congress or rules of court.

The principles of evidence are, generally, the same as to the burden of proof, the relevancy of testimony, the requisition of the best evidence, and the like.

SECTION II. — STATE LAWS.

The Revised Statutes of the United States, § 858, provide that the law of the State in which the court is held shall be the rule of decision as to the competency of witnesses in the courts of the United States in trials, except as excepted in said section. See Appendix.

SECTION III. — MODE OF PROOF.

By section 862 of the United States Revised Statutes, the mode of proof in admiralty causes shall be according to rules by the Supreme Court, except as specially provided in chapter seventeen of those statutes. See Appendix.

A book of original entries, kept by the captain of the propeller, who was also part-owner, is inadmissible to

prove cash payments, there being no other proof of these payments.¹

A receipt given by an ignorant salvor in full for services will be opened up by the admiralty court, and a larger sum awarded.²

The carrying contract reduced to writing in a bill of lading can no more be altered or varied by parol evidence than any other written contract.³

Bills of lading are both receipts and contracts to carry, evidence showing that the goods were not shipped on board the vessel at all is admissible.⁴

A bill of lading, or other voucher giving the terms of transportation, cannot, in the absence of fraud or other concurrent mistake, be varied by parol.⁵

Evidence of prior conversations is inadmissible to vary the provisions of a bill of lading.⁶

In proceedings in admiralty, the strict rules of the common law in respect to the admission of evidence are not fully applied.⁷

The testimony of experts is admissible in determining an issue involving a question of nautical skill.⁸

By Rule 46 of the Rules of Practice for the courts of the United States in admiralty, by the United States Supreme Court, it is established that, in cases

¹ *Milligan v. Propeller Bruce*, Newb. 539.

² *The Sir Robert Peel*, A. C., Shipping Gazette, Dec. 8, 1854. See *MacLachlan on the Law of Merchant Shipping*, 531.

³ *S. L. James v. St. Bt. Golden Rule*, by Pardee, Circuit Judge, November, 1881; *The Delaware*, 14 Wall. 579.

⁴ *Hutchinson on Carriers*, § 122; *The Schooner Freeman v. Buckingham*, 18 How. 182.

⁵ *Abbott's Trial Evidence*, p. 573, No. 42, and authorities there cited.

⁶ *O'Rourke v. Two Hundred and Twenty-one Tons of Coal*, 1 Fed. Rep. 619.

⁷ *Elwell v. Martin, Ware*, 3; *The J. F. Spencer*, 3 Ben. 337. See *Abbott's Trial Evidence*, p. 784, No. 1. 2; *Abb. U. S. Pr.* 80.

⁸ *Transportation Line v. Hope*, 95 U. S. (5 Otto) 297; *The City of Washington*, 92 U. S. (2 Otto) 31.

not provided for by the foregoing rules, the District and Circuit Courts are to regulate the practice. See Admiralty Rule 46, Appendix, and authority there cited.

SECTION IV. — IN LOUISIANA.

In this district (Louisiana) the practice is to take, by order of court, or by consent of parties, the testimony of witnesses before the clerk, acting as United States commissioner. Sometimes, by consent, the testimony is taken, at a time and place agreed upon, without the presence of a commissioner; or the testimony may be taken by commissioners, as provided by Rules 14–18 of the District Court of Louisiana.

SECTION V. — DEPOSITIONS.

Testimony may also be taken by depositions *de bene esse*, under sections 863–865 of the United States Revised Statutes.

Wharton's Law of Evidence says that the adjudications on depositions would require a separate volume. This want has been well supplied by a treatise on the Law of Depositions, by Edward P. Weeks, in a volume of 714 pages, comprising the law of depositions, and abstracts of the statutes relating thereto.

Witnesses may be examined by *dedimus potestatem* to take testimony, under sections 866, 868, 869 of the United States Revised Statutes. See Appendix.

Testimony may also be taken by depositions *in perpetuam rei memoriam*, by virtue of section 866 of the United States Revised Statutes; and by letters rogatory, under section 875 of those statutes. See Appendix.

Subpoenas for witnesses are regulated by section 876 of the United States Revised Statutes. See Appendix.

The rules of evidence in admiralty cannot be changed by a State statute.¹

In the admiralty the same rule does not prevail as in equity,—that the answer to matters directly responsive to the allegations of the bill is to be treated as sufficient proof of the facts, in favor of the respondent, unless overcome by the testimony of two witnesses, or of one witness and other circumstances of equivalent force.²

On exceptions allowed, that the answer is not full and explicit, the court may compel defendant to make further answer, or direct the matter of the exception to the answer to be taken *pro confesso*. See Admiralty Rule 30 of the United States Supreme Court, Appendix, and authorities there cited.

So, on default of libellant to answer interrogatories; or the court may dismiss the libel. Admiralty Rule 32. See Appendix, and authorities there cited.

The answer of the defendant to the libel and interrogatories must be on oath or solemn affirmation, and full and explicit, and distinct. Admiralty Rule 26. See Appendix, and authorities there cited.

The party claiming the property must verify his claim on oath or solemn affirmation. Admiralty Rule 26. See Appendix, and authorities there cited.

SECTION VI. — ON APPEAL.

Further proof taken in a Circuit Court upon an admiralty appeal shall be by depositions upon oral examination, unless the court allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories, upon notice, as pro-

¹ The *William Jarvis*, 1 Sprague, 485.

² *Andrews v. Wall*, 3 How. 572.

vided by Rule 49 in Admiralty. See Appendix, and authorities there cited; and United States Revised Statutes, § 865, herein above cited.

When oral evidence shall be taken down by the clerk of the District Court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal. Admiralty Rule 50. See Appendix, and authorities there cited.

When a motion is made by an appellant to examine witnesses in the Supreme Court in appeal in admiralty, the appellant should show some excuse satisfactory to the court for the failure to examine them in the court below.¹

The cause may be continued to the next term, if the proof is deficient, with leave to each party to produce further proof.²

It is the practice of the Supreme Court, in prize causes, to hear the cause, in the first instance, upon the evidence transmitted from the Circuit Court, and to decide upon the evidence whether it is proper to allow further proof.³

Affidavits to be used as further proof in causes of admiralty and maritime jurisdiction in this court must be taken under commission.⁴

If the evidence is taken under a commission issued after an appeal, without a previous order from this court, it will not be considered, unless a sufficient excuse is shown for the failure to examine the witnesses in the usual way before the appeal.⁵

In the District Court of the United States, sitting

¹ *The Maby*, 10 Wall. 419.

⁴ *Ibid.*

² *The Samuel*, 1 Wheat. 9.

⁵ *The Juniata*, 91 U. S. (1 Otto)

³ *The London Packet*, 2 Wheat. 366.

in admiralty, the law of England may be proved by printed books of statutes, reports, and text-writers, as well as by the sworn testimony of experts.¹

SECTION VII.—BURDEN OF PROOF.

The burden of proof is on the appellant to demonstrate, beyond a reasonable doubt, the mistake or error of law or of fact.²

Probably no two minds, acting often independently of each other, will always arrive at exactly the same conclusion as to amount in cases of discretionary salvage. Yet each might act for itself with the utmost caution, care, and sagacity. A decree will not, therefore, be reversed upon this ground, unless there is a plain and palpable departure from the true principles of salvage.³

Where it appears that manifest injustice has been done in the assessment of damages, or error in law has been committed, it is the duty of the court to interfere.⁴

The Circuit Court ordinarily does not interfere with the amount of damages decreed by the court below. The district judge has the witnesses before him, and therefore has an opportunity of arriving at the truth not within the grasp of the Circuit Court, where the testimony is in writing. When, therefore, no additional testimony is taken, the Circuit Court will not hastily disturb a decree on the point of damages, or unless it shows manifest injustice.⁵

¹ *The Pawashick*, 2 Low. 142.

Anna, 10 Blatchf. 456; *Bearse v.*

² *Cushman v. Ryan*, 1 Story, 91;
Bearse v. Pigs of Copper, 1 Story,
314; *Baker v. Smith*, 1 Holmes, 85.

Pigs of Copper, 1 Story, 314.

⁴ *The Yankee v. Gallagher*, 1
McAllister, 467.

⁵ *The Boston*, 1 Sumn. 328; *The*

The Yankee v. Gallagher, 1

In the case of *Tucker et al. v. The Barque Mary C. Porter and Cargo*,¹ it was held, that, if a cargo is imported or brought into the United States, under the general law subject to duties, but under certain circumstances exempted from duties, it is for the owner, asking the benefit of the exception, to make proof of the facts which entitle him to it.

In *Flannagan v. Ship Queen of the East*,² Judge Pardee said : —

I understand it to be well settled that, in all maritime contracts, usage or customs are always applicable and binding on the parties to explain doubtful, and supplement incomplete, agreements and stipulations.

“The principle on which evidence of usage is admissible for such a purpose is, that the parties have not set down the whole of their contracts in all its terms, but those only which were necessary to be determined in the particular case, by specific agreement, and which, of course, may vary infinitely, leaving to implication and tacit understanding all those general and unvarying incidents which a uniform usage would annex, and according to which in reason they must be understood to contract, unless they expressly exclude them.” See *MacLachlan*, p. 384.

“Any custom or usage may be proved, not only to explain the meaning of terms to which a peculiar and technical meaning is thus affixed, but also to supply evidence of the intentions of the parties in respect to matters with regard to which the contract itself affords a doubtful indication, or perhaps no indication whatever.

“And, therefore, an established and well-known custom may add to a contract terms or stipulations not contained in it.” See 1 *Waite*, 128 *et seq.*

McAllister, 467; *West v. The Uncle Sam*, 1 *McAllister*, 505; *Cushman v. Ryan*, 1 *Story*, 91; *The Narragansett*, 1 *Blatchf.* 211; *Taylor v. Harwood*, *Taney*, 437.

¹ U. S. Dist. Ct. for the District of South Carolina, *Magrath, J.* (not reported).

² Eastern District of Louisiana, *May*, 1882, by *Pardee*, Circuit Judge.

Where there has been no actual delivery of goods, the carrier cannot be concluded by pretended bills of lading, which the master signs in fraud of his employers by connivance with the consignor.¹

On evidence in courts of admiralty and maritime jurisdiction, see also Greenleaf on Evidence, pp. 350-410, vol. iii., 13th ed., carefully revised, with large additions, by John Wilder May, Boston, 1876.

¹ *Grant v. Norway*, 10 C. B. 665. And see Schouler's *Bailments*, 374; *Hutchinson on Carriers*, pp. 94-96.

CHAPTER IX.

TRIAL.

SECTION I. — REFEREES.

ALTHOUGH the District Court has no power to try an admiralty case by jury, except as allowed by statute, yet it may on its own motion, or at the desire of the parties, submit any question of fact to commissioners or referees for their opinion or advice ; and the number of these commissioners may be twelve as well as any other number.¹

See Chapter XII., APPEALS, Section I.

SECTION II. — BILL OF EXCEPTIONS.

Only such rulings are to be put in the bill of exceptions as can properly be put into a bill of exceptions on the trial of an action at law.²

SECTION III. — IN THE LOUISIANA DISTRICT.

The case in the Louisiana district is set down for hearing on motion of either party for a day certain. That both libellant and claimant should be accorded this right to have a day assigned for the trial is eminently proper.

The practice in the United States District Court for the District of Louisiana, that either libellant or claim-

¹ Lee v. Thompson, 3 Woods, 167.

² The Abbotsford, 98 U. S. 440.

ant may "notice a case for hearing," accords with that of the District Court for the Southern District of New York.¹

In *Jennings v. Carson*,² Marshall, C. J., in delivering the opinion of the court, said the libellant and the claimant are both actors.

By Rule 19 of the United States District Court it is provided that, in all cases brought to trial, or argument, or hearing, five days' notice shall be served on the party, or on his attorney or proctor, when the party or his attorney resides in the parish of Orleans. In all other cases, posting such notice conspicuously in the clerk's office for the term of seven days shall be sufficient notice.

It is not usual in the Louisiana district to read the testimony in full to the court.

Where there are several libellants who have filed their libels at different dates, the proctor in the libel first filed opens the case. This he does by a brief statement, sketch, or outline of the libel, of the prayer, of the testimony in so far as it applies to his particular case, and of the authorities in support of his positions or demands.

He is followed by the proctor, whose libel is second in the date of filing; and so on until all the proctors for libellants or for intervenors have opened their cases and proceeded with their libel testimony and law, as did the proctor for the libellant whose libel was first filed.

Each proctor is allowed forty minutes, unless where, in cases of extraordinary complication, importance, or voluminousness, the court extends the time.

In some few cases the court has stated that it would

¹ The Mariel, 6 Fed. Rep. 81.

² 4 Cranch, 2.

not limit the proctor as to time. (The same rules as to time prevail in the Circuit Court on appeal.)

After the proctor or proctors for libellant or libellants have concluded their opening, the proctor for respondent replies in like manner.

The proctor for libellant then briefly replies to his adversary, and the case is submitted to the court.

Sometimes the court recommends, and sometimes requires, a brief statement in writing of the substance of the testimony and of the law.

In important or difficult cases the proctors furnish printed briefs to the District Court, and so likewise to the Circuit Court. The case is then taken under advisement by the court, and the decree is rendered within a reasonable time after the trial.

In Chapter VII., PRACTICE AND PLEADING, and Chapter VIII., EVIDENCE, I have already furnished much which applies to "The Trial."

SECTION IV. — NEW TRIAL.

The party dissatisfied with the decree may, before it becomes final, apply for a new trial.

This is effected by a rule on the opposite party to show cause, on a day and hour stated, why a new trial should not be granted on the grounds therefor stated in the rule.

If the court permits the rule to be filed, it is briefly argued at the time stated therein, and submitted.

An application for a rehearing will be denied, if it is made after the lapse of the term at which the decree was entered.¹

¹ *Petty v. Merrill*, 12 Blatchf. 11.

SECTION V. — CONTINUANCE.

A party who has not been guilty of laches may get a continuance for the purpose of producing further proof.¹

If the party fails to have the deposition of a witness in the District Court reduced to writing, and the witness does not attend upon summons, it is in general no ground for a continuance.²

There may be a case where special circumstances of surprise upon the party, or sickness of the witness, may except it out of the rule ; but it must be a strong case.³

If the witness who was examined in the District Court is present in the Circuit Court, the party is entitled to examine him.⁴

No case will be continued for the purpose of enabling the party to procure new testimony. He must come prepared with his new testimony, if he desires to use it.⁵

The appellant cannot obtain a continuance where he has neglected to file the transcript until within a few days before the commencement of the term.⁶

¹ *Rose v. Himley*, Bee, 313.

² *Taylor v. Harwood*, Taney, 427.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Backus v. The Marengo*, 6 McLean, 499; *Nall v. The Illinois*, 6 McLean, 413.

CHAPTER X.

DECREE.

SECTION I. — ON APPEAL.

THE whole decree in the court below is brought up on the appeal, although only a part is appealed from. In its nature it is not severable. A part of the suit cannot be in one court and a part in another at the same time. If that which is appealed from is reversed, that which is not reversed becomes a part of the decree, and is to be executed by the Circuit Court.¹

If a libellant appeals from a decree in his favor he opens the whole case, and the Circuit Court may dismiss the libel if it finds that he is not entitled to recover.²

If the decree allows interest to the date thereof, the interest must be included with the principal, in order to determine what was the sum or value in dispute at the time when the appeal was taken; and if that sum exceeds \$5,000, an appeal to the Supreme Court lies.³

Unless interest is specially claimed in the libel, no computation of interest can be made to give jurisdiction. Interest is not allowed, unless specially directed.⁴

¹ *The Roarer*, 1 Blatchf. 1.

⁴ *Udall v. The Ohio*, 17 How.

² *Saratoga v. Four Hundred and Thirty-eight Bales*, 1 Woods, 75. 17; *Olney v. The Falcon*, 17 How. 19; *The Grapeshot*, 2 Woods, 42.

³ *The Patapesco*, 12 Wall. 451; *The Rebecca Clyde*, 12 Blatchf. 403. And see *The Rio Grande*, 19 Wall. 178.

SECTION II. — WHEN INTEREST ALLOWED.

If a decree is affirmed, interest for the delay may be allowed on the costs as well as on the amount of the decree.¹

In the case of *The Louisiana*,² the decree of the Circuit Court, by Woods, Circuit Justice, allowed four and a half per cent on the value of the ship and cargo (\$700,000 being that value), with interest at the rate of five per cent per annum from 24th March, 1880, the date of the decree in the District Court, and costs of court.

Interest is not allowed in salvage cases,³ unless specially directed by the court.⁴

Nor is interest allowed where the decree is affirmed by a divided court.⁵

If the vessel has been discharged on stipulation, and one of the stipulators has since died, his death should be suggested, and a decree entered against the other.⁶

SECTION III. — REHEARING.

An application for a rehearing will be denied if it is made after the lapse of the term at which the decree was entered.⁷

The Circuit Court cannot remand the case to the District Court to carry its decisions into execution. The court must carry its own decree into execution.⁸

¹ *The Wanata*, 95 U. S. 600.

⁵ *Ibid.*

² No. 9156 of the Docket of the U. S. Circuit Court for the Eastern District of Louisiana, June 16, 1881 (not reported).

⁶ *The James A. Wright*, 10 Blatchf. 160; *The C. Ackerman*, 14 Blatchf. 860.

³ *Phillips's Practice in United States Supreme Court*, 190.

⁷ *Petty v. Merrill*, 12 Blatchf. 11.

⁴ *Hemmenway v. Fisher*, 20 How. 255.

⁸ *Montgomery v. Anderson*, 21 How. 386; *The Collector*, 6 Wheat. 194. But see *contra*, U. S. Rev. Stat. § 636, which provides that

This section 636 extends to admiralty proceedings, and gives the United States courts power, after hearing a cause on appeal, to remand with directions.¹

A new decree should be made in the Circuit Court. The decree should be complete within itself. No final decree of a court which enforces its own judgments ought to be left in such condition that the record of another court is the only evidence of the amount recovered by the successful party. An order merely affirming the decree of the District Court is not a final decree.²

The Circuit Court should not affirm a decree in part, and dismiss the appeal.³

Courts of admiralty have power to vary their own decrees. In the American practice, a summary rehearing, on motion, can be granted only during the term at which the decree was made. In defaulted actions, the summary jurisdiction to rehear is limited to ten days, irrespective of terms of court, by Admiralty Rule 40 of the Supreme Court. After the term has passed in ordinary cases, and after ten days in defaulted cases, the court can entertain a libel of review.⁴

SECTION IV. — MARSHALLING ASSETS.

Courts of admiralty recognize and enforce in proper cases the equitable rule that where one creditor has two

"A Circuit Court may affirm, modify, or reverse any judgment, decree, or order of a District Court brought before it for review, or may direct such judgment, decree, or order to be rendered, or such further proceedings to be had by the District Court, as the justice of the case may require."

¹ *The Benefactor Steamship Co. v. Mount*, 13 Otto, 239; 11 Fed. Rep. 928.

² *Harris v. Wheeler*, 8 Blatchf. 81; *The Lucille*, 19 Wall. 73.

³ *The Lottawana*, 20 Wall. 201.

⁴ *Snow v. Edwards*, 2 Lowell, 273.

funds to resort to, and another has but one, the creditor having two will be compelled to resort first to that which the other creditor is not entitled to resort to, in order that both may be paid.¹

In the case of competing suits, the court of admiralty, as a court of equity, will marshal the assets so as to protect one creditor against another, and prevent the election of one from prejudicing the other's claim.²

The District Court can marshal the fund in its registry only between lien-holders and owners.³

SECTION V. — ADMIRALTY RULES AS TO DECREES.

By Rule 8 in Admiralty (see Appendix), in suits *in rem* against a ship, her tackle, &c., if such tackle, &c., are in the possession of a third person, the court may decree delivery to the marshal or other proper person.

Admiralty Rule 21 (see Appendix, and authorities there cited) provides that, on final decree for payment of money, libellant shall have a writ of execution against defendant or stipulators.

By Rule 40 in Admiralty (see Appendix, and authorities there cited) the court may rescind the decree rendered, on account of defendant's contumacy and default.

By Admiralty Rule 41 (see Appendix, and authorities there cited) all sales shall be made by the marshal, and the proceeds paid into the registry of the court.

¹ The Brig Wexford, 7 Fed. Rep. 683 (1881), citing The Sailor Prince, 1 Ben. 234, 461; The Adolph, 7 Fed. Rep. 935. See The Olivia A. Carrington, 7 Fed. Rep. 507; The Brig Wexford, 7 Fed. Rep. 674.

² Abbott's Law of Merchant Ships and Seamen, 599 (12th ed., London, 1881, by S. Prentice, Q. C.).

³ The Edith, 94 U. S. (4 Otto) 518.

Where a steamer is condemned for the loss of a schooner, the decree for a total loss bars any claim to the schooner by her former owners, and their title should be remitted to the owners of the steamer.¹

The rule that the court will give priority to the suitor who first obtains a decree applies only as between claimants *in pari conditione*.²

In a case of collision, where the decree is against both defendants, it should provide that any balance which the libellants shall be unable to collect from one shall be paid by the other, or her stipulators, to the extent of her stipulated value beyond the moiety due from her.³

The doctrine announced in *The Atlas* (93 U. S. 302), that where an innocent party suffers damages by a collision resulting from the mutual fault of two vessels, only one of which is libelled, the decree should be against such vessel for the whole amount of the damages, and not for a moiety thereof, — reaffirmed, and applied to the case of *The Juniata*.⁴

In the case of *The Lillie Laurie*,⁵ Judge Woods said: —

An interesting question of practice is raised by the fact that the decrees rendered by the District Court in favor of the furnishers of supplies in the home port, each decree being for a less sum than fifty dollars, and the decree therefore not being subject to appeal, were paid in full out of the registry of the court, pending the appeal of *Stevenson*.

Were these decrees properly paid? It seems to me clear

¹ *The Falcon*, 19 Wall. 75.

U. S. (7 Otto) 323. See *The Ala-*

² *The Markland*, 3 A. & E. 340;

bama and The Game Cock, 92 U. S. (2 Otto) 695.

³ *Law Reports Digest*, 1865-1880 (London, 1882), p. 2911.

⁴ 93 U. S. 837.

⁵ *The Virginia Ehrman and The Agnese*, 97 U. S. (7 Otto) 809; *The City of Hartford and The Unit*, 97

Circuit Court, Eastern District of Texas, Dec. 3, 1880, Woods, Circuit Judge.

that they were not. The funds in the registry being insufficient to pay the costs, the maritime liens, and the claims of these furnishers of supplies, a controversy necessarily arose between Stevenson and the supply men, touching their right to priority of payment. The libel of Stevenson having been dismissed by the District Court, his right to priority of payment over the supply men could only be settled in the Circuit Court, and that question was taken up by the appeal. All that the supply men could insist on was that the amount of their claims should not be disturbed by the Circuit Court, that having been finally settled by the District Court. But as long as Stevenson was prosecuting his appeal, and claiming priority over them in the Circuit Court, they could not settle that question in their own favor by getting payment of their claims in full from the registry of the District Court. To hold otherwise would be to allow the fund against which an appellant was prosecuting his claim to be entirely withdrawn, and thus deprive him of all the fruits of his appeal and decree, should the appellate court decide in his favor.

Where there is a fund in the District Court against which several libellants are prosecuting claims, and it is insufficient to pay all, and the claim of the libellant is disallowed and he appeals to the Circuit Court, no payments should be made from the fund until after the decree of the Circuit Court upon the appeal.

By such an appeal the whole decree is brought up. The part not appealed from remains here in full force, to be executed on the final termination of the cause. What is not reversed is still in force, and becomes part of the decree of this court, and is to be executed as such. *The Roarer*, 1 Blatchf. 1. The result of this view is that the entire fund should have been sent up to this court with the appeal. The appeal carries the *res*, or money, in the registry of the District Court to the Circuit Court, and when the rights of the parties are adjudicated, then the court must carry into execution its own decree.¹

¹ *Montgomery v. Anderson*, 21 How. 386.

CHAPTER XI.

COSTS AND FEES.

SECTION I. — COSTS.

WHERE the cause is reversed for want of jurisdiction, the libellants may be decreed to pay all the costs.¹

If the decree is not varied as to the appellee, he is entitled to costs.²

If the appeal is dismissed for want of jurisdiction, no costs will be awarded.³

If the libellant claims to reverse the whole decree, no costs will be allowed to him where the libel is dismissed for want of jurisdiction.⁴

If the District Court awarded costs against the libellant on dismissing the libel for want of jurisdiction, no costs will be awarded against him in the Circuit Court on an affirmance of that decree.⁵

Where the judgment is reversed, the appellant is entitled to costs.⁶

In a salvage case, the court, in its discretion, may charge the costs upon the property saved.⁷

Where the decree of the District Court is reversed on the production of new proofs, and no reason is given

¹ *Tome v. Four Rafts of Lumber*, Taney, 533.

² *The Henry Ewbank*, 1 Sumn. 400; *Citizens' Bank v. Nantucket Steamboat Co.*, 2 Story, 16; *The Margaret v. The Connestoga*, 2 Wall. Jr. 116.

³ *Agnew v. Dorman*, Taney, 386.

⁴ *The McDonald*, 4 Blatchf. 477.

⁵ *Ibid.*

⁶ *The Margaret v. The Connestoga*, 2 Wall. Jr. 116.

⁷ *The Boston*, 1 Sumn. 328.

why they were not produced in the court below, neither party will recover against the other costs on appeal.¹

If the claimant succeeds in establishing the defence set up in his answer, he is entitled to costs in the Circuit Court.²

Where the decree is reformed, no costs may be allowed to either party.³

By section 968 of the United States Revised Statutes, it is provided that when in a Circuit Court a libellant, upon his own appeal, recovers less than the sum of \$300, exclusive of costs, he shall not be allowed, but, at the discretion of the court, may be adjudged, to pay costs.

When the case is reversed in favor of the libellant upon a ground not urged below, it will be without costs.⁴

The matter of costs is not, *per se*, the proper subject of an appeal, but it can be taken notice of only incidentally as connected with the principal decree when the correctness of the latter is directly before the court.⁵

The allowance or non-allowance of costs is not a subject of appeal.⁶

The appellate court will not interfere with the decree as to costs, unless under peculiar circumstances.⁷

Section 978 of the United States Revised Statutes provides that when proceedings are had before a court of the United States or of the Territories, on several libels against any vessel and cargo, which might legally

¹ Reed v. Hussey, 1 Bl. & H. 525; Carrigan v. Pitman, 1 Wall. Jr. 307.

² Macomber v. Thompson, 1 Sumn. 384.

³ Vernard v. Hudson, 3 Sumn. 405; The Underwriter, 4 Blatchf. 94.

⁴ Dupont v. Vance, 19 How. 162.

⁵ United States v. The Malek Adhel, 2 How. 210.

⁶ Jordan v. Woods et als., 3 Woods, 146.

⁷ United States v. The Malek Adhel, 2 How. 210.

be joined in one libel, there shall not be allowed thereon more costs than on one libel, unless special cause for libelling the vessel and cargo separately is satisfactorily shown on motion in open court.

Where unnecessary libels or claims are filed, it is at the peril of paying costs.¹

There is nothing in the language of this section which leads to the conclusion that where several persons have a like cause of action founded on a several liability to each, and not on a joint liability to all, they must join under a penalty of a forfeiture of costs.²

By U. S. Rev. Stat. § 982, it is provided that if any attorney, proctor, or other person admitted to conduct causes in any court of the United States, or of any Territory, appears to have multiplied the proceedings in any cause before such court, so as to increase costs unreasonably and vexatiously, he shall be required, by order of the court, to satisfy any excess of costs so increased.

No costs can be awarded to either party when a case is dismissed for want of jurisdiction, for where there is no power to adjudicate upon the merits there is no power to award costs.

If a decree is affirmed, interest for the delay may be allowed on the costs as well as on the amount of the decree.³

In the unreported case of *The Louisiana*, in the Eastern District of Louisiana, April term, 1881, although the District Court had awarded six per cent salvage on \$700,000, the value of said steamship and her salvaged cargo; and although on appeal to the Circuit

¹ *The Henry Ewbank*, 1 Sumn. 400.

² *The Young Mechanic*, 3 Ware, 58.

³ *The Wanata*, 95 U. S. 600.

Court by claimants as well as libellants and intervenors, the circuit justice decreed only four and a half per cent salvage on said value, yet the circuit justice, Woods, decreed that the claimants pay all costs of this case both in the District Court and in the Circuit Court, and that no part of said costs should be taken from the sum awarded to the libellants and intervenors.

The costs of a salvage cause are (except as regulated by the rules hereinafter cited) in the discretion of the court.

Although they may not necessarily be given to the successful party,¹ yet generally they follow the event, and where a claim for salvage fails, the plaintiffs may be, and on many occasions have been, ordered to pay them;² and the more especially if the case set up by the salvors turn out to be a false or fraudulent one.³

Salvors who have been guilty of misconduct may, as has already been pointed out, not only forfeit their claims for salvage, but be also condemned to pay the costs of the defendants.⁴

And in cases where the court did not consider the misconduct of the salvors [as, for instance, where they obtruded their services after being discharged, or prevented further assistance being given to the vessel] to

¹ See *The North Star*, Lush. 45-51; *The William*, Lush. 182; *The Ironsides*, Lush. 458-467; *The Johannes*, Lush. 182; *The Kepler*, Lush. 201; *The Albatross*, 1 Spinks, 175, n.; *The Trident*, 1 Spinks, 224, n. (a); *The Catalina*, 2 Spinks, 23; *The Golubchick*, 1 W. Rob. 143; *The Diana*, 32 L. J. Adm. 57; *The Fortitude*, 2 W. Rob. 217-225; *The Lord Auckland*, 2 W. Rob. 801; *The Glasgow Packet*, 2 W. Rob. 306; *The Nicolina*, 2 W. Rob. 175; *The North American*, Swa. 466; *The St. Lawrence*, 7 Notes of Cases, 556; *The Laurel*, Br. & L. 191; *The Apollo*, 1 Hagg. 306-319.

² *The Lady Egidia*, Lush. 513; *The Edward Hawkins*, Lush. 515; *The Nymphe*, 5 L. T. n. s. 365; *The Duke of Manchester*, 10 Jur. 863; *The London*, Br. & L. 82.

³ *The Giacomo*, 3 Hagg. 344; *The Susannah*, 3 Hagg. 345, n.

⁴ *The Lady Catherine Barham*, 5 L. T. n. s. 693. See also *The Joseph Harvey*, 1 C. Rob. 306.

be of so serious a nature as to occasion a forfeiture of all salvage remuneration, it has, nevertheless, punished them by awarding only two-thirds of their costs,¹ or a fixed sum, *nomine expensarum*, instead of costs.²

Where one of the crew of a salving vessel libelled the saved property to recover his share of the salvage, and a motion was made to compel him to file security for costs, upon the ground that the salvage had been paid to the master: held, that in the absence of an agreement on the part of the seaman to waive his right to salvage, he would not be compelled to give security for costs.³

See also *The Magdalen*, 5 L. T. N. S. 807-809. See *The Nautilus*, Swa. 105, where salvors, who, after an award by consent before justices, commenced a suit in the admiralty court, and accepted a tender of the amount that the justices had awarded, were condemned in damages and costs; and *The Gloria de Maria*, Swa. 106, where salvors, who, after appealing from the award of Cinque Ports commissioners, instituted a suit, and arrested the vessel, were also condemned in costs, damages, demurrage, and expenses. See also *The Bell of Lagos*, L. R. 2 Adm. 345; 20 L. T. N. S. 1019; *The Margaret and Jane*, 38 L. J. Adm. 381.

The indulgence which the court of admiralty has always shown to salvors, however, and the expediency of encouraging their exertions, which it has always recognized, has frequently induced it to act leniently towards them in awarding costs.

In *The Princess*,⁴ Dr. Lushington observes: "It has

¹ *The Glory*, 14 Jur. 676.

⁴ 3 W. Rob. 138-143. See also

² *The Glasgow Packet*, 2 W. Rob. 306-314. *The William*, 5 Notes of Cases, 108.

³ *The Cetewayo*, 7 Fed. Rep. 128 (1881).

been the policy of the maritime law of this country, from the earliest times, to countenance and favor this meritorious class of persons, and nothing I conceive would be more contrary to that policy, or more likely to damp the energies of salvors in general, than the frightening them from a recourse to this court by a rigid application of the principle of costs." The court has, therefore, not only dismissed suits on many occasions without costs as against the plaintiffs,¹ but it has, under special circumstances, even allowed the salvor whose claim it rejected the costs of the proceedings as against the owner.²

If the defendants tender to the salvors, and pay into court, a sum subsequently held to be sufficient, and the salvors notwithstanding proceed with their suit, they will be condemned in costs;³ and where after an offer of £80 was refused by the claimants, and a tender of £30 only was made, and the court subsequently awarded £50, it nevertheless refused to give the salvors costs.⁴

If, however, there are unusual circumstances involved in the case, the court is unwilling to apply the doctrine of costs after tender against salvors. Dr. Lushington in one case observes: "There is in the very nature of salvage services something so loose and indefinite, and so difficult to be determined by the best-constituted minds when looking at their own case, that I am not inclined to press the doctrine to its full extent."⁵

¹ The Little Joe, Lush. 88; The Frances and Eliza, 2 Dods. 115-118; The Dygden, 1 Notes of Cases, 115-118; The Upnor, 2 Hagg. 3; The Zephyr, 2 Hagg. 43-48; The Mulgrave, 2 Hagg. 77; The Harriot, 1 W. Rob. 439-447.

² The Ranger, 9 Jur. 119, 120;

The Frances and Eliza, 2 Dods. 115-121; The Vine, 2 Hagg. 1-3.

³ The Cargo *ex* Honor, L. R. 1 Adm. 87; The Batavier, 1 Spinks, 169; The Paris, 1 Spinks, 289; The Black Boy, 3 Hagg. 386, n.

⁴ The Hedwig, 1 Spinks, 19-24.

⁵ The William, 5 Notes of Cases,

The court will not ordinarily, however, in such a case, grant costs, as it would be holding out an inducement to salvors to reject adequate tenders.¹

The tender must either offer to pay the costs of the salvor, or state the grounds on which the payment is resisted.²

Notwithstanding respondent in a cause of salvage makes a tender which is adjudged sufficient, yet if it is not so liberal but that the salvor might reasonably prosecute the suit in expectation of obtaining a larger award, the court has power, in the exercise of a sound discretion, to allow him costs of proceedings after the tender. But the general rule is that a sufficient tender throws after-costs on libellant.³

In the case of the *Salvor Wrecking Co. v. Sectional Dock Co.*,⁴ the decree below against the Dock Company was reversed and the libel dismissed as to all the respondents; but as the question of jurisdiction was not raised until after the proofs were taken, each party was condemned to bear the costs he had incurred, except that the costs in the Circuit Court were decreed by Dillon, Circuit Judge, to be paid by the libellants.

In *The Red Rover*,⁵ an action was entered, after five or six months, for £120. The value of the vessel was £100.

The judge said: "This is a case of the simplest description, and ought to have been settled on the spot. I think I am bound to allot something by way of salvage. I award £5; but I will give no costs."

So, in *Peisch v. Ware*, 4 Cranch, 347.

108-110. See also *The Hopewell*, 2 Spinks, 249.

¹ *The Hopewell*, *ubi supra*; *The Sovereign*, Lush. 85.

² *The Hickman*, L. R. 3 Adm. 15.

³ *Lubker v. The N. H. Quimby*, 8 Reporter, 806.

⁴ *Central Law Journal*, 640 (St. Louis, Oct. 6, 1876), unreported in *Dillon's Reports*.

⁵ 3 W. Rob. 150.

See Admiralty Rule 25, Appendix, and authority there cited, as to stipulation of defendant for costs.

See Admiralty Rule 26, Appendix, where a claim is put in.

See Admiralty Rule 28, Appendix, and authority there cited, as to costs on insufficient answer.

See Admiralty Rule 34, Appendix, and authorities there cited, that intervenor must give stipulation for costs.

As to costs on allowance of exception to answer, see Admiralty Rule 36, Appendix, and authority there cited.

As to security by respondent on cross-libel, see Admiralty Rule 53, Appendix.

Where a fair tender is offered, the refusal of it may subject the party who refuses to accept it to the loss of his costs, and sometimes to the payment of costs to the other party.¹

As to taxation of costs, see U. S. Rev. Stat. § 823.

See General Rule 24, par. 1, of the Supreme Court, Appendix, and authority there cited, as to costs on dismissal except for want of jurisdiction.

See the same Rule, par. 2, Appendix, and authority there cited, as to costs on affirmance.

See the same Rule, par. 3, Appendix, and authority there cited, as to costs on reversal.

As to exemption of United States for costs, see the same, par. 4, Appendix.

The party who fails in any suit, except under peculiar circumstances, should pay the whole of the costs.²

A court of admiralty may, at the instance of a party, and without letters of request, enforce a decree *in perso-*

¹ Dunlap Practice, 104; Ben. Adm. § 552, p. 326; 2 Conk. Adm. 442.

² The Christina, 8 Jur. 321.

nam for the payment of costs rendered by an admiralty court in another district.¹

Expenses incurred under a lawful order of court may be taxed as part of the costs and inserted as part of the judgment against the losing party.²

The costs of the reference as to damages in an action of damage do not follow the costs of the action, but are, in the discretion of the judge, as the costs of a fresh litigation.³

Where both parties appealed, and each had partial success, no costs in Circuit Court allowed to either party.⁴

SECTION II. — FEES.

By section 824 of the United States Revised Statutes it is provided that, on a final hearing in admiralty, a docket fee of twenty dollars shall be taxed and allowed to the proctor. But nothing herein shall be construed to prohibit the proctors from charging to and receiving from their clients such reasonable compensation for their securities, in addition to taxable costs, as may be in accordance with general usage in their respective States, or may be agreed upon between the parties. But if libellant recovers less than fifty dollars, his proctor's fee shall be ten dollars. For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents. For services tendered in cases removed from a District Court to a Circuit Court by writ of error or appeal, five dollars.

¹ *Pennsylvania R. R. Co. v. Gilhooley*, 9 Fed. Rep. 618.

² *Neff v. Pennoyer*, 3 Sawyer, 336; *Simpson v. One Hundred and Ten Sticks of Hewn Timber*, 7 Fed. Rep. 245.

³ *The Consett*, 5-P. D. 77; 2 Law Reports Digest, 1865-1880 (London, 1882), p. 2917.

⁴ *Elliot v. The Leipsic*, U. S. Cir. Ct. S. D. New York, 13 Law Reporter, No. 9, p. 264 (Boston, 1882).

Courts of admiralty cannot properly allow counsel fees to the counsel of the gaining side in admiralty, as an incident to the judgment, beyond the costs and fees allowed by statute.¹

In the district of Louisiana the practice is to allow the docket fee to the proctor for the successful party.

And where two or more libels are filed by different proctors, only one docket fee is allowed, and that is given to the proctor prior in time in filing his libel.

The docket fee of twenty dollars is the highest compensation allowed to an attorney in a cause, and it can be allowed but once.²

The docket fee of twenty dollars may be allowed, although the libellant discontinues the suit after a witness has been sworn. The fee does not depend upon a judgment or decree, but is taxable on a trial or final hearing. It is taxable whenever the trial is entered upon by the swearing of a jury in a common-law case, or by the introduction of testimony or the final opening of the argument upon a final hearing in equity or admiralty.³

Proctors have a lien for their costs.⁴

In the case of *The Bay City*,⁵ Brown, D. J., said : —

I think the fee is taxable whenever the trial is entered upon by the swearing of a jury in a common-law case, or by the introduction of testimony or the final opening of the argument upon a final hearing in equity or admiralty. The fee is not made by the statute to depend upon a judgment or decree, but is taxable on a trial or final hearing. As the labor for which the docket fee is supposed to be a compensation is performed on or before the trial, equitably the party

¹ *The Baltimore*, 8 Wall. 377.

² *Troy I. & N. Factory v. Corning*, 7 Blatchf. 16; *Dedekam v. Vose*, 3 Blatchf. 77.

³ *The Bay City*, 3 Fed. Rep. 47.

⁴ *The Araminta*, Swa. 81.

⁵ 3 Fed. Rep. 47 (1880).

ought not to lose the benefit of it by a discontinuance entered after the trial or hearing has begun. In New York the practice seems to be to allow it upon a final disposition of the cause, even without a trial or hearing.¹

It is proper for the clerk to charge for including the evidence in a suit in admiralty in the final record, on final decree, notwithstanding the provision of section 1 of the act of Feb. 16, 1875 (18 U. S. Stat. at Large, 315), in regard to appeals in admiralty to the Supreme Court.²

As regards the fees of the clerk, see the United States Revised Statutes, § 828.

As to the marshal's fees, see United States Revised Statutes, § 829.

Under section 829 of the Revised Statutes the marshal is entitled to his commissions, when, after a seizure in admiralty, the suit is settled, though without an order of sale. The commissions will be computed upon the amount paid in settlement.³

¹ Hayford v. Griffith, 3 Blatchf. 79.

² The Alice Tainter, 14 Blatchf. 225.

³ The *Clintonia*, 11 Fed. Rep. 740, by Billings, D. J., April, 1882, reported by Joseph P. Hornor, Esq., of the New Orleans Bar.

CHAPTER XII.

APPEAL.

SECTION I. — APPEALS FROM DISTRICT COURT TO CIRCUIT COURT.

FROM all final decrees of a District Court in causes of equity or of admiralty and maritime jurisdiction, except prize causes, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, an appeal shall be allowed to the Circuit Court next to be held in such district, and such Circuit Court is required to receive, hear, and determine such appeal.¹

The appeal must be joint where the interest is joint, and several where there are distinct and separate interests represented by independent parties in the same suit.²

If a provisional decree awards a certain sum to libellant, with leave to either party to take an order of reference to a commissioner to ascertain the sum really due, no appeal lies therefrom.³

A decree which directs the charges and expenses of keeping and selling the property and the fees and charges of the officers to be deducted from the pro-

¹ *Mordecai v. Lindsay*, 19 How. 200; *Montgomery v. Anderson*, 21 How. 388; *United States v. Wonsan*, 1 Gall. 6; *McLellan v. United States*, 1 Gall. 229; *Brig Hollen*, 1 Mass. 434; U. S. Rev. Stat. § 631.

² *Thomas v. Lane*, 2 Sumn. 1. See also *Federal Practice*, by Field & Miller, pp. 123-125.

³ *The Yuba*, 4 Blatchf. 314.

ceeds, but leaves the fees, charges, and expenses, and the share of each party to be ascertained, is an interlocutory decree, and no appeal will lie from it.¹

An application for a rehearing being an application to the conscience and discretion of the court which made the decree, is not the legitimate subject of an appeal.²

In the case of *The Illinois*,³ Wilkins, J., said : " Claimants' counsel took an appeal to the Circuit Court. This appeal was dismissed, on the ground that an appeal would not lie upon a decree by default."

An appeal from the District Court to the Circuit Court only lies, under section 631 of the Revised Statutes of the United States, when the decree of the former court is final.

The granting or refusal of an injunction is in the discretion of the court, and such interlocutory orders are not appealable.⁴

The decree must be final, and the matter in dispute must exceed the value of fifty dollars, exclusive of costs. The appellant must have both these points in his favor.⁵

Where a libel claims three hundred dollars damage, and a decree is given for libellant for forty dollars, in which he acquiesces, the respondent cannot appeal to the Circuit Court.⁶

Where salvors united in a claim for a single salvage service, jointly rendered by them, the owner of the property is entitled to an appeal where the sum decreed exceeds \$5,000, although the Circuit Court

¹ *The New England*, 3 Sumn. Fed. Rep. 763 (see note by the editor).
495.

² *The Enterprise*, 3 Wall. Jr. 58.

³ 1 Brown, 14.

⁴ *Norton v. Hood and Others*, 12

⁵ *Davis v. The Seneca*, Gilp. 34.

⁶ *Greigg v. Reade, Crabbe*, 64.

deemed it proper to apportion the recovery among the salvors according to their respective merits.¹

An appeal to the Circuit Court, from the decree of the District Court, in a case in admiralty, carries up the whole fund.²

If the libellant does not in his libel claim more than fifty dollars, he cannot appeal from a decree dismissing the libel, although the evidence shows that he was entitled to recover more than that sum.³

An appeal in the admiralty has the effect to supersede and vacate the decree from which it is taken. A new trial, completely and entirely new, with other testimony and other pleadings, if necessary, or if asked for, is contemplated, — a trial in which the judgment of the court below is regarded as if it had never been made.⁴

In *The Swedish Bark Adolph*,⁵ it was held, on appeal to the Circuit Court from a decree of the District Court dismissing the libel, that the claimant of the vessel which was attached on service of the monition is not entitled to have her released, or to a bond from the libellants to pay such damages as the claimant may sustain by reason of her detention pending the appeal, in case the libel shall be dismissed in the appellate court. To hold otherwise would be inconsistent with Admiralty Rule 11. Unless the attachment was *mala fide*, or there was gross negligence amounting to bad faith, no damages for her detention caused by such arrest can be recovered.

If the appeal is taken before the surrender of the

¹ *The Connemara*, 103 U. S. (13 Otto) 754.

² *The Lady Pike*, 90 U. S. (6 Otto) 461.

³ *Agnew v. Dorman*, Taney, 386.

⁴ *The Lucille*, 19 Wall. 73; *Yeaton v. The United States*, 5 Cranch, 281.

⁵ 5 Fed. Rep. 114 (1880), citing *The Evangelisimos*, Swa. 378; s. c. 12 Moore P. C. C. 358; *The D. S. and Peri*, Lush. 543; *The Strathnaver*, L. R. 1 Ap. Cases, 58; *The Active*, 5 Law Times, n. s. 773; *The Amelia*, Moore P. C. C. (*sic*).

vessel by the marshal, and a bond is filed within the time allowed by law, the Circuit Court obtains jurisdiction although the vessel is not in its possession.¹

When an appeal is taken, the *res* is transmitted to the Circuit Court.²

Where the appeal is regular, the funds belonging to the case must be transferred to the Circuit Court, with the papers, as the court below has no longer any control over them.³

Any discharge by the District Court of the persons in whose custody the funds may be *after* an appeal is a nullity.⁴

If the vessel is released on stipulation, an appeal takes the stipulation into the Circuit Court, and a decree may there be entered against the stipulators.⁵

The appeal bond follows the cause into the Circuit Court, and upon the affirmance of the decree it may be enforced there in the same manner as in the District Court.⁶

"An appeal by any parties interested in the distribution of salvage, as to their shares, brings up incidentally a review of the whole decree, so far as the distribution is concerned."⁷

The evidence taken in the District Court is reduced to writing, and forms a part of the proceedings.⁸

¹ The Rio Grande, 23 Wall. 458; Otis v. The Rio Grande, 1 Woods, 279.

² United States v. Towns, 7 Ben. 444; The Grotius, 1 Gall. 503.

³ Hayford v. Griffith, 3 Blatchf. 34; The Lottawana, 20 Wall. 201; The Collector, 6 Wheat. 194.

⁴ Hayford v. Griffith, 3 Blatchf. 34; The Grotius, 1 Gall. 503; The Collector, 6 Wheat. 194; Penhallow v. Doane, 3 Dall. 54; Davis v. The Seneca, Gilp. 34.

⁵ The Lady Pike, 96 U. S. 461; Dutcher v. Woodhull, 7 Ben. 313; McLellan v. United States, 1 Gall. 227; Nelson v. United States, 1 Pet. C. C. 235; The Wanata, 95 U. S. 600.

⁶ The Wanata, 95 U. S. 600.

⁷ See The Henry Ewbank, 1 Sumn. 400; The Lady Pike, 96 U. S. 461.

⁸ Folger v. Shaw, 2 W. & M. 531.

If a note was surrendered in the District Court, it should appear in the record by whom it was produced, and for what purpose.¹

On an appeal, the District Court is divested of jurisdiction over the *res* and its proceeds, and the Circuit Court is invested with exclusive authority over the same.

The first authority to which I will refer is a decision of Judge Story in the case of *The Grotius*, 1 Gall. p. 503. On the lower part of page 505 that learned jurist states the law very clearly, as follows : —

On the whole, I am satisfied that after an appeal the property is removed from the legal custody of the District Court, and is no longer subject to its interlocutory orders.

This decision was affirmed by the Supreme Court of the United States, in the case of *The Collector*, 6 Wheat. p. 203, where Mr. Justice Livingston rendered the decision as follows : —

By an appeal from the sentence of the District Court to a Circuit Court, the latter becomes possessed of the cause, and executes its own judgment without any intervention of the former. It is fit, therefore, that the proceeds of the property, if it have been converted into money, should follow the appeal into the Circuit Court, and be deposited in such bank, or other place, as it may direct, there to remain, subject to the disposition and direction of the Circuit Court ; and if the property at the time of the appeal remain *in specie* in the marshal's custody, and any order or direction shall become necessary for its sale or preservation after an appeal, such order must emanate from the Circuit Court.

The proceeds, therefore, of *The Collector* and cargo, at the time of filing the present petition and libel, even if the order of the District Court in relation to them had been complied

¹ *Reppert v. Robinson*, Taney, 492.

with, could not, after the appeal, be regarded as in, or under, the control of the District Court, which was therefore incompetent, when this petition was filed, to make any order respecting them.

It was held by Judge Hopkinson, in the case of *Davis & Brooks v. The Seneca*, Gilpin, p. 40, that, "being removed from this court, it [the property] must follow the appeal, and passes at once into the custody of the Superior or Circuit Court, to whom any application about the disposition of it must be made."

Again: the Supreme Court of the United States say, in the case of *Montgomery v. Anderson*, 21 How. p. 388: "The appeal carries up the *res* or money in the registry of the District Court to the Circuit Court; and when the rights of the parties are adjudicated there, the court must carry into execution its own decree."

And it is again laid down by the Supreme Court of the United States, in the case of *The Lady Pike*, 96 U. S., foot of p. 465, that "the rule is universal, that an appeal from a District Court to a Circuit Court carries up the whole fund."

Mr. Justice Nelson, in *Heyford v. Griffith*, 3 Blatchf. p. 36, said: —

Where the appeal is regular, so as to bring up the case into this court, the funds belonging to the case must be transferred to this court with the papers, as the court below has no longer any control over them; and any discharge by that court or any of its officers, of the persons in whose custody the funds may be, is a nullity. This court, from the time the appeal takes effect, is responsible for the safe-keeping of the funds, and for their application in behalf of the party who shall ultimately be found to be entitled to them. The court below has no longer any jurisdiction over the case or any of its incidents; and it is the duty of the clerk of this court in

cases of appeal, where there is a fund in the court below, to obtain a transfer of the same, and to inquire into its state and condition and report the same to this court.

In the case of *The Lottawana*, 20 Wall. p. 201, the United States Supreme Court says, near the foot of p. 225, that if the proceeds have been paid over, they should be recalled, if practicable, and restored to the registry.

If both parties for a long time treat an appeal as valid, one of them cannot then have it dismissed.¹

A party who did not appeal from a decree of the District Court cannot question the correctness of the decree.²

If the libellant, in a case where the respondent appeals, is dissatisfied with the amount awarded to him, he should take a cross-appeal; and if he omits to do so, he waives all right to further damages, and can only claim an affirmance of the decree. It is only where the Circuit Court reverses the decree of the District Court that it can proceed to render such a decree as the District Court ought to have rendered. It cannot pronounce a decree for increased damages without first reversing the decree of the District Court on the subject of damages, and that it cannot do where the libellant does not appeal.³

The proceedings of the commissioner in allowing or rejecting items cannot be reviewed on appeal, unless exceptions to the report are filed and passed on by the District Court.⁴

Where no exception is taken to the admission of

¹ *The Native*, 14 Blatchf. 34. *Stratton v. Jarvis*, 8 Pet. 4; *Bush v.*

² *Bush v. The Alonzo*, 2 Cliff. *The Alonzo*, 2 Cliff. 548.
548; *Allen v. Hitch*, 2 Curt. 147.

⁴ *Harris v. Wheeler*, 8 Blatchf.

³ *The Peytona*, 2 Curt. 21; s. c. 1; *Farrel v. Campbell*, 7 Blatchf.
1 Ware, 541; *Airey v. Merrill*, 2 158; *The Vicksburg*, 7 Blatchf.
Curt. 8; *Allen v. Hitch*, 2 Curt. 147; 216.

evidence in the District Court, the question cannot be considered.¹

Whether the terms on which the District Court offered to allow an amendment of the libel were severe and exceptionable or not, is a matter which cannot be noticed on an appeal. Amendments rest in the sound discretion of the court in which the proceedings are pending, and the order of the court in this respect cannot be called in question in the appellate court.²

If the appellant fails to prosecute his appeal to the next term of the Circuit Court held after the entry of the decree, he will be deemed to have deserted it.³

If the appellant neglects to prosecute his appeal, the appellee must apply for relief to the Circuit Court and not to the District Court.⁴

If the appellant deserts his appeal, the cause may be remitted to the District Court, and the taxation of the costs may be retained in the Circuit Court or directed to be made in the District Court, or the appellee may produce the record in the Circuit Court, and, upon an *ex parte* hearing, claim an affirmance of the original decree, with costs.⁵

If the libellant, after the entry of his appeal, fails to prosecute it, and nothing else is shown as to the merits but the judgment of the court below, the court will, at the instance of the respondent, affirm that judgment.⁶

A cross-appeal, even though the other appellant has docketed his appeal, must be prosecuted like all other appeals.⁷

¹ Campbell v. The Uncle Sam, 1 McAllister, 77.

² Brown v. The Cadmus, 2 Paine, 564.

³ Montgomery v. The Betsy, 1 Gall. 416; United States v. Haynes, 2 McLean, 155.

⁴ The Josephine, 1 Abb. Adm. 481.

⁵ Montgomery v. The Betsy, 1 Gall. 416.

⁶ Folger v. Shaw, 2 W. & M. 531.

⁷ Winslow v. Wilcox, U. S. Supreme Court, decided April 3, 1882,

If the property has been released on a stipulation, the Circuit Court cannot fix a higher value upon the *res* than that for which the stipulation was taken. The stipulation is a substitute for the *res*, and upon the appeal stands in the place of it, and represents it in the appellate court. It cannot, therefore, be put aside and a new valuation substituted in its place.¹

If the parties who become stipulators in the District Court become insolvent, the claimant, on motion of the libellant, may be required to file a new stipulation in the Circuit Court.²

If an abandonment is accepted after an appeal is taken, the insurer may appear in the Circuit Court and become *dominus litis*.³

The Circuit Court cannot remand the case to the District Court to carry its decisions into execution. The court must carry its own decree into execution.⁴

The whole decree in the court below is brought up on the appeal, although only a part is appealed from. In its nature it is not severable. A part of the suit cannot be in one court and a part in another at the same time. If that which is appealed from is reversed, that which is not reversed becomes a part of the decree, and is to be executed by the Circuit Court.⁵

If a libellant appeals from a decree in his favor he opens the whole case, and the Circuit Court may dismiss his libel if it finds that he is not entitled to recover.⁶

not reported up to Feb. 10, 1883, 12 Fed. Rep. 314. October Term, 1881; Morrison's Transcript, vol. iv. No. 2, p. 394.

¹ Housman v. The North Carolina, 15 Pet. 40.

² The Virgo, 13 Blatchf. 255; The Union, 4 Blatchf. 90.

³ The Ann C. Pratt, 1 Curt. 840;

The Monticello v. Mollison, 17 How. 152.

⁴ Montgomery v. Anderson, 21 How. 386; The Collector, 6 Wheat. 194. But see *contra*, Chapter X., DECREE, p. 278, and 13 Otto, 239.

⁵ The Roarer, 1 Blatchf. 1.

⁶ Saratoga v. Four Hundred and Thirty-eight Bales, 1 Woods, 75.

A new decree should be made in the Circuit Court. The decree should be complete within itself. No final decree of a court which enforces its own judgments ought to be left in such condition that the record of another court is the only evidence of the amount recovered by the successful party. An order merely affirming the decree of the District Court is not a final decree.¹

The Circuit Court shall not affirm a decree in part, and dismiss the appeal.²

In case of an appeal, as provided by section 698, United States Revised Statutes, copies of the proofs, and of such entries and papers on file as may be necessary on hearing of the appeal, shall be transmitted to the Supreme Court.

By Rule 45 of the United States Supreme Court in admiralty, it is provided that all appeals from the District Court to the Circuit Court must be made while the court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.³

The only appeals known to courts of admiralty are in open court, *sedente curia*. Within the limits fixed by the statute, the District Court may prescribe the times and modes of making them.⁴

The appeal is usually *viva voce*, though at times in writing.⁵

If there is no rule of the District Court regulating the time within which an appeal may be taken, it can

¹ Harris v. Wheeler, 8 Blatchf. Regia, 17 Wall. 29; Norton v. Rich, 81; The Lucille, 19 Wall. 73. 3 Mason, 443.

² The Lottawana, 20 Wall. 201.

⁴ The Enterprise, 3 Wall. Jr. 58.

³ Amended May 6, 1872, 12 Wall. xiv; The Nuestra Señora de

⁵ Folger v. Shaw, 2 W. & M. 531.

only be taken in open court immediately after the decree and before the adjournment for the term.¹

If the District Court adjourns without day before an appeal is taken, the party is deemed to have waived any appeal; and no appeal subsequently taken possesses any validity, although it is offered or entered before the next term of the Circuit Court.²

A decree is operative when the term closes at which it was rendered, before application for rehearing or new trial.³

If an appeal was prayed and allowed and a bond filed, it is sufficient, although it was not entered on the minutes of the District Court.⁴

Appeals in admiralty and equity must be taken to the next term of the Circuit Court after the rendition of the decree in the District Court, or an appeal cannot be taken at all.⁵

If the appeal is not taken to the next term of the Circuit Court held in the district after the rendition of the decree, the appeal will be dismissed.⁶

In case of surprise or misapprehension the court will always interfere, on motion and due proofs, and enlarge the time until a reasonable opportunity is afforded to perfect an appeal.⁷

If the District Court unlawfully refuses to allow an appeal, the Circuit Court, on motion, will allow the appeal to be entered.⁸

¹ Norton v. Rich, 3 Mason, 443.

² The New England, 3 Sumn. 495.

³ Brockett v. Brockett, 2 How. 233; Cambuston v. The United States, 95 U. S. (5 Otto) 285.

⁴ Oates v. The Rio Grande, 1 Woods, 593.

⁵ Drake v. The Oriental, 9 C. L.

N. 321; United States v. The Glamorgan, 2 Curt. 236; The Hollen, 1 Mason, 431; Gloucester Insurance Co. v. Younger, 2 Curt. 322.

⁶ United States v. Specie, 1 Woods, 14.

⁷ Gaines v. Travis, 1 Abb. Adm. 422.

⁸ The Enterprise, 2 Curt. 317.

By rule of the United States District Court for the Eastern District of Louisiana, dated April 17, 1879, it is provided, that if after the expiration of ten days from the rendition of a final decree no appeal be taken, execution may issue on the judgment; proceedings under this execution will, however, be stayed on an appeal being taken, and the appellant filing a *supersedeas* bond before the expiration of the next succeeding fifty days.

This order does not affect unappealable cases, where the execution issues forthwith.

By Rule 22 of the United States District Court, Eastern District of Louisiana, it is provided that all appeals from final judgments of this court, operating as a *supersedeas* or suspensive appeal, shall be taken within sixty days after said judgments shall have been rendered; and such appeals may be taken either by motion in open court or by petition.

SECTION II.—APPEALS FROM CIRCUIT COURT TO SUPREME COURT.

By section 692 of the United States Revised Statutes it is provided that an appeal shall be allowed to the Supreme Court from all final decrees of any Circuit Court, or of any District Court acting as a Circuit Court, in cases of equity and of admiralty and maritime jurisdiction, where the matter in dispute, exclusive of costs, exceeds the sum or value of \$5,000; and the Supreme Court is required to receive, hear, and determine such appeals. (Thus amended by act of Feb. 16, 1875, ch. 77, § 3, 18 Stat. 316, entitled "An Act to facilitate the disposition of cases in the Supreme Court of the United States, and for other purposes.")

As to the time for taking appeals to the Supreme

Court, see United States Revised Statutes, § 1008, in my Appendix.

Cases of admiralty and maritime jurisdiction cannot be carried to the Supreme Court for re-examination in any other mode than by appeal.¹

If the District Court is not acting as a Circuit Court in an admiralty case, no appeal lies from its decree directly to the Supreme Court.²

An appeal lies to the Supreme Court where the cause has been transferred from the District Court to the Circuit Court on account of the interest of the district judge in the controversy, or general disability to discharge his duties, or his relationship to either of the parties, or because he has been counsel in the case.³

A district judge sitting as the Circuit Court may allow an appeal from his own decree.⁴

If the decree of the District Court is against both vessels, and the claimants of one only appeal to the Circuit Court, it is doubtful if the owners of both can appeal to the Supreme Court from an affirmance of that decree, although the one who did appeal represents the entire interest of the losing party.⁵

If the decree is that a judgment shall be entered against the stipulators unless an appeal is taken, and an appeal is taken, there is no decree against the stipulators. If the decree of the Circuit Court is affirmed by the Supreme Court, and the Circuit Court then on motion refuses to enter a decree against the stipulators, this decision can only be reviewed by an appeal.⁶

The Supreme Court has jurisdiction of an appeal in

¹ The *Baltimore*, 8 Wall. 377.

⁴ *Rodd v. Heartt*, 17 Wall. 354.

² *Sally v. United States*, 5 Cranch, 372.

⁵ *The Mabey and Cooper*, 14 Wall. 204.

³ *United States v. Circuit Judges*, 3 Wall. 673.

⁶ *Ex parte Sawyer*, 21 Wall. 235.

admiralty, although the Circuit Court affirmed the decree of the District Court *pro forma* because the judge had been counsel for one of the parties.¹

An order of the Circuit Court merely affirming the decree of the District Court in a case in admiralty is not a final decree from which an appeal may be taken.²

The Supreme Court has no jurisdiction where the Circuit Court entertained an appeal before a final decree of the District Court.³

A decree is final although it embodies a direction for the taxation of costs.⁴

A party who does not appeal from a decree may be heard in support of the decree upon an appeal taken by the adverse party, but cannot be heard in opposition thereto.⁵

If exceptions to a libel are not brought to the attention of the Circuit Court, nor referred to, either expressly or by implication, in the appeal, they will be deemed to be conclusively waived by the respondent when he is the appellant. To consider them would be to exercise the appellate power in reviewing the action, not of the Circuit Court, but of the District Court. This cannot be done.⁶

A bill of exceptions, to present for review, upon appeal to the Supreme Court, the rulings of the Circuit Court, must be based on exceptions taken to such rulings at the time the rulings were made.

¹ Oregon v. Rocca, 18 How. 570.

² The Lucille, 19 Wall. 73; Harris v. Wheeler, 8 Blatchf. 81.

³ Mordecai v. Lindsay, 19 How. 199; Montgomery v. Anderson, 21 How. 386.

⁴ Craig v. The Hartford, 1 McAllister, 91. See Harris v. Wheeler, 8 Blatchf. 81.

⁵ The Stephen Morgan, 94 U. S. (4 Otto) 599; The Reindeer, 2 Wall. 383; The Marianna Flora, 11 Wheat. 1; M'Donough v. Dannery, 8 Dall. 188; The Societe, 9 Cranch, 209; The Quickstep, 9 Wall. 665.

⁶ The Vaughan, 14 Wall. 258.

Where, after the taking effect of the act of Feb. 16, 1875, ch. 77 (18 Stat. part 3, p. 315), the ascertainment of the amount of damages sustained by the vessel not in fault was referred to a master, the action of the Circuit Court, upon exceptions to his report, all of which relate to questions of fact, will not be reviewed here.¹

Section 1 of the act above cited, to facilitate the disposition of cases in the Supreme Court of the United States and for other purposes, approved Feb. 16, 1875, provides that the Circuit Court shall find the facts, and also provides for trial by jury.

The ruling in *The Abbotsford*, that under the act of Feb. 16, 1875 (18 Stat. 315), the finding of facts by the Circuit Court in admiralty cases is conclusive, and that only rulings upon questions of law can be reviewed by bill of exceptions, was reaffirmed.²

Where the appeal involves a question of fact, the burden is on the appellant to show that the decree in the subordinate court is erroneous.³

Congress intended that the Supreme Court shall hear and determine the whole merits of the controversy, and the facts as well as the law of the case are open to revision on appeal.⁴

The Supreme Court will not reverse a decree of the Circuit Court merely upon a doubt created by conflicting testimony.⁵

The Supreme Court will re-examine the whole testi-

¹ *The Richmond*, 103 U. S. (13 Otto) 540. How. 491; *The Water Witch*, 1 Black, 494; *The Potomac*, 2 Black,

² *The Benefactor*, 102 U. S. (12 Otto) 214. 581; *The Quickstep*, 9 Wall. 665; *Philadelphia, W., & B. R. R. Co. v.*

³ *The Baltimore*, 8 Wall. 377; *Towboat Co.*, 23 How. 209; *The United States v. One Hundred and Hypodame*, 6 Wall. 217; *Newell v. Twelve Casks*, 8 Pet. 277. Norton, 3 Wall. 257; *The Marcellus*,

⁴ *The Baltimore*, 8 Wall. 377. 1 Black, 414; *Mephams v. Biessel*,

⁵ *The S. B. Wheeler*, 20 Wall. 9 Wall. 370.
385; *Morewood v. Enequist*, 23

mony in the case, and is as much bound to reverse a decree for error of fact, if clearly established, as for error of law.¹

If the Circuit Court affirmed the decree of the District Court, the decree will not be reversed upon a mere difference of opinion as to the weight and effort of conflicting testimony.²

SECTION III. — AMOUNT.

The Supreme Court is not in the habit of revising decrees as to the amount of salvage, unless upon some clear and palpable mistake or gross over-allowance by the court below. It is equally against sound policy and public convenience to encourage appeals in matters of discretion, unless there has been some violation of just principles which ought to regulate the subject.³

The English decisions as to appeals as to the amount of salvage are to the same effect as those of the Supreme Court of the United States.

The Judicial Committee of the Privy Council are unwilling to interfere with the judgment of the courts appealed from, where the question is one of amount, which rested in the discretion of the judge of the court below;⁴ and they will refuse to disturb the amount of compensation awarded by the court below, unless the difference between that amount and the sum which, in their judgment, should have been given is very considerable.⁵

Nor will they interfere with a salvage award on the ground that the judge of the court of admiralty has given too large a sum to the salvors, unless they are

¹ *The Baltimore*, 8 Wall. 377;
The Lady Pike, 21 Wall. 1.

² *Hobart v. Drogan*, 10 Pet. 108.

³ *The Clarisse*, Swa. 129-134;

⁴ *The Juniata*, 93 U. S. (3 Otto) 337. *The Scindia*, L. R. 1 P. C. 241-249.

⁵ *The England*, 38 L. J. Adm. 9.

satisfied beyond all doubt that he has made an exorbitant estimate of their services.¹

Where a party seeks by appeal to diminish or increase such an award, he undertakes a very difficult task; but, nevertheless, if an excess or an exorbitance exists, the Judicial Committee will exercise their own judgment as to the proper remuneration to the salvors, and reduce it to a just and reasonable amount.²

Thus, where the court of admiralty awarded £3,150 for salvage services, which the Judicial Committee considered would be sufficiently remunerated by £1,500, they reduced the award to the latter amount.³

If, in the same way, the Privy Council should be of opinion that the sum awarded is insufficient, they will increase it to such an amount as they consider reasonable. Thus, in *The True Blue*,⁴ where a derelict vessel and cargo of the value of £1,452, was saved by a steamer which, with her cargo, was of the value of £30,000, the Privy Council increased a salvage award of the Vice-Admiralty from £300 to £450.

The court of admiralty is equally as unwilling as the Privy Council to encourage salvage appeals where the question is merely one of amount, and in such cases the burden always lies on the appellant, especially where the decision appealed from is a decision of discretion.⁵

The court, especially where the appeal is from a decision of persons acquainted with the locality, relies to

¹ *The Fusilier*, Br. & L. 341-350; and *Prendeville v. The Steam Navigation Co.*, 38 L. J. Adm. 9.

² Judgment of Lord Chelmsford, *The Chetah*, 38 L. J. Adm. 1.

⁴ *Ubi supra*.

⁵ Judgment of Dr. Lushington, *The Cuba*, Lush. 14, 15.

³ *The Chetah*, *ubi supra*. See also *The True Blue*, L. R. 1 P. C.

some extent on the local skill of those who decide the question; but the judge by whom the appeal is heard will nevertheless exercise his own judgment upon it, and if the sum awarded is entirely insufficient for the services rendered, he will act upon his own judgment, and decide accordingly.¹

The court has on many occasions increased the sum awarded by justices. Thus, where salvors brought a barge off a dangerous position near the Nore Sand, and claimed £80, and the magistrates at Maidstone awarded them £15 only, the court of admiralty, on appeal, held that this sum was totally inadequate for the services rendered, and that there had been a gross miscarriage of justice on the part of the magistrates, and awarded the salvors £40 with costs; ² and where the justices, in a case where it was alleged that the salvors had agreed to render the service for 8s. 6d., dismissed the claim, the court holding that real danger had been incurred by the salvors in rendering the service, set aside the agreement as futile, and gave the claimants £10 and costs.³

Unless the sum awarded be wholly inadequate, however, the court will not disturb it, even although it considers the services such that, if the case had come before it originally, it might have given a larger amount.⁴

There is great difficulty with appellants where the only ground upon which the appeal is based is that the amount allowed by the court below is too small. The doctrine is that such allowance is in the discretion of the judge of that court. But it has been held in such

¹ Judgment of Dr. Lushington, The Messenger, Swa. 191. See 58.

The Vesta, 2 Hag. 189.

² The Harriet, Swa. 218.

³ The Phantom, L. R. 1 Adm.

⁴ The Jeune Louise, 37 L. J. Adm. 32.

a case "that where the law gives a party an appeal, he has a right to demand the conscientious judgment of the appellate court on every question arising in the cause. Hence, many cases are to be found where the appellate court has either increased or diminished the allowance of salvage originally made, even where it did not violate any of the just principles which should regulate the subject."¹

"It is exceedingly inconvenient that in a salvage suit, where the amount to be awarded is, under ordinary circumstances, a mere matter of discretion, expense should be incurred by resorting to another court; at the same time, it must be borne in mind that as long as the legislature admits of an appeal, the judge before whom the case is appealed *must exercise his own judgment upon it*. If, on the one hand, the award is, upon the whole, fair as between the parties, he will leave the case where he finds it, especially where it is a matter of discretion; but if, on the other hand, it appears to him that the award is insufficient for the services rendered, then he must act upon his own judgment in that suit accordingly;" and in that case the salvage award was increased from £15 to £50.²

In the case of *The Thetis*, 3 Hagg. 65, upon an appeal by two of the libellants, the High Court of Admiralty of England gave the sum of £12,000 in addition to the sum or award allowed by the lower court.

In *The City of Berlin*, 2 P. D. 187, the Court of Appeal of England, in 1877, increased the salvage award of Sir R. Phillimore, which was £2,000, by allowing £4,000, with the costs of the appeal.

¹ *Post v. Jones*, 19 How. 160. last case the award was increased

² *The Messenger*, Swa. 191, 192; from £15 to £40.
The Harriet, Swa. 218. In this

In *The Robert Bruce*, 5 Notes of Cases, 153 (5 Eng. Adm.), the High Court of Admiralty of England increased the award of £250 allowed by the lower court to £500.

In the case of *The Raiker*, 1 Hagg. 247, the award was increased from £115 to £200.

In *The True Blue*, L. R. 1 P. C. p. 250, Dr. Lushington, in rendering the opinion of the Privy Council, says, on page 253, as follows : —

It is perfectly true, as it has been argued on behalf of the respondents in these two cases, that this court is always very reluctant to review cases of salvage, either coming from the court of admiralty or from the vice-admiralty courts, on the sole ground of the pecuniary reward which has been bestowed in those courts being deemed to be insufficient ; because it is manifest that in all these cases there is the exercise of individual discretion, and that exercise of individual discretion almost always differs among different persons. Still, however, if they think that the justice of the case has not been attained, it is the duty of this court, sitting as a court of appeal, to remedy any grievance which may appear to exist, and to do that which, under the circumstances, they may consider to be right.

And accordingly the award of the vice-admiralty court was increased from £350 to £450.

In the case of *The Scindia*, L. R. 1 P. C. 241, in rendering the judgment at the same time as that announced in the case of *The True Blue*, above quoted, the Privy Council increased the salvage award from £2,000 to £3,000. See p. 257.

In the case of *The Glenduror*, L. R. 3 P. C. 589, the Committee of the Privy Council increased the award of the lower court, which was £1,000, to £2,000.

In *The Cayenne*,¹ Hall, J., delivering the opinion of the court, said: —

In the case of *The Brig Carolina* I allowed threefold of the actual value of the actual service, and the Chief Justice of the United States increased the allowance from \$650 to \$1,800.

On the other hand, the Privy Council decreased the awards of the lower courts, and reduced them in the cases of *The Amérique*, L. R. 6 P. C. 468; and *The Chetah*, L. R. 2 P. C. 205; and they laid down the principle that the amount or difference of estimate, which would justify their reviewing the decisions of the judge of the lower court as to the amount of the award, should be to the extent of one-third: unless the difference amounted at least to that, they would not interfere.

The appeal suspends the sentence altogether.

The cause in the appellate court is heard *de novo*. See Phillips's Practice, U. S. S. C. 57.

The ruling in *Jerome v. McCarter*, 21 Wall. 17, that where, by reason of the changed circumstances of the case, or of the parties, or of the sureties on a *super-sedeas* bond, so that the security, which at the time it was taken was sufficient, does not continue to be so, this court will, on proper application, so order and adjudge as justice may require, was reaffirmed, and applied to the case of *Williams v. Claffin*, 103 U. S. (13 Otto) 753.

Where the claim on a fund in the registry of the admiralty of several mortgages, secured in a body by one mortgage, exceeds \$2,000, an appeal to the Supreme Court will lie by the mortgagees in a body,

¹ District Court, District of Delaware, October Term, 1870, 1 Abbott (U. S.), 42.

though the claim of no one of them exceed the said sum.¹

The ruling in *The Abbotsford*, 98 U. S. 440, that under the act of Feb. 16, 1875 (18 Stat. §15), the finding of facts by the Circuit Court in admiralty cases is conclusive, and that only rulings upon questions of law can be reviewed by bill of exceptions, reaffirmed.²

The record in causes of admiralty and maritime jurisdiction shall be confined to the pleadings, the findings of facts and conclusions of law thereon, the bills of exceptions, the final judgment or decrees, and such other orders and decrees as may be necessary to a proper review of the case.³

¹ *Rodd v. Heartt*, 17 Wall. 354.

² *The Adriatic*, 103 U. S. (13

³ *The Benefactor*, 102 U. S. (12 Otto) 214.

730; Additional paragraph, No. 6, to Rule 8.

APPENDIX.

RULES

OF

PRACTICE FOR THE COURTS OF THE UNITED STATES

IN

ADMIRALTY AND MARITIME JURISDICTION, ON THE INSTANCE
SIDE OF THE COURT, IN PURSUANCE OF THE ACT OF THE
TWENTY-THIRD OF AUGUST, 1842, CHAPTER 188.

RULE 1. Process, Issue and Service of. — No mesne process shall issue from the District Courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy, or where he or they are interested, by some discreet and disinterested person appointed by the court.

United States *v.* Schooner Charles, 1 Brock. 382.

RULE 2. In Suits in Personam, Nature of. — In suits *in personam* the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that, if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and

answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

Manro v. Almeida, 10 Wheat. 473; *McGrath v. Candalero*, Bee, 64; *North v. Brig Eagle*, id. 78; *Bouysson v. Miller*, id. 186.

RULE 3. Bail, Summary Process. — In all suits *in personam* where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court. And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

Bingham v. Wilkins, Crabbe, 50; *United States v. Little Charles*, 1 Brock. 382; *Gaines v. Travis*, Abb. Adm. 422; *Gardner v. Isaacson*, id. 141.

RULE 4. Attachment, when may be dissolved. — In all suits *in personam* where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

RULE 5. Bonds or Stipulations. — Bonds, or stipulations in admiralty suits, may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner

of the United States authorized by law to take bail and affidavits in civil cases.

Amended, May 6, 1872, 13 Wall. xiv; *The Martha*, Blatchf. & H. 151; *The Infanta*, Abb. Adm. 327; *Sawyer v. Oakman*, 11 Blatchf. 65.

RULE 6. Bail, Reduction. New Sureties.—In all suits *in personam* where bail is taken the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given, upon motion and due proof thereof.

RULE 7. Warrant of Arrest, when may issue.—In suits *in personam* no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

Marshall v. Bazin, 7 N. Y. Leg. Obs. 342.

RULE 8. Ship's Tackle, &c., Possession, how obtained.—In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over, award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

RULE 9. Cases of Seizure, Process in.—In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and

shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the District Court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

Certain Logs of Mahogany, 2 Sumn. 589; Poland v. Brig Spartan, 1 Ware, 134; Ship Robert Fulton, 1 Paine, 620.

RULE 10. Perishable Goods. — In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy in decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

The Nathaniel Hooper, 3 Sumn. 542; The Cheshire, Blatchf. Pr. Cas. 165; The Ella Warley, id. 213; Jennings v. Carson, 4 Cranch, 2.

RULE 11. Ship, Delivery to Claimant. — In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement to be had, under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a

sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

Ship Virgin, 8 Pet. 538.

RULE 12. Suits by Material-men. — In all suits by material-men for supplies or repairs, or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*.

Promulgated December Term, 1844; Amended 1st May, 1859, 21 How. iv, and 6th May, 1872, 18 Wall. xiv; The Aurora, 1 Wheat. 105; The General Smith, 4 Wheat. 438; The St. Jago de Cuba, 9 Wheat. 409; Ramsay v. Allegre, 12 Wheat. 611; Peyroux v. Howard, 7 Pet. 324; Ship Virgin, 8 Pet. 538; N. J. S. & V. Co. v. Merchants' Bank, 6 How. 390; Maguire v. Card, 21 How. 248; The Nassau, 4 Wall. 634; The Maggie Hammond, 9 Wall. 435; The Grapeshot, id. 129; The Guy, id. 758; The Patapasco, 13 Wall. 329; The Steamer St. Lawrence, 1 Black, 522; The Robert Fulton, 1 Paine, 620; Philips v. The T. Scatterwood, Gilp. 1; A New Brig, id. 473; Schooner Marion, 1 Story, 68; Barque Chusan, 2 Story, 456; The Jerusalem, 2 Gall. 345; Zane v. Brig President, 4 Wash. C. C. 453; The Levi Dearborn, 4 Hall's Am. L. J. 83; The Nestor, 1 Sumn. 73; Pritchard v. The Lady Horatia, Bee, 167; The Ocean Queen, 6 Blatchf. 24; Wolf v. The Selt, 17 Int. Rev. Rec. 22; The Selt, 3 Biss. 344; The Kate Tremaine, 5 Ben. 64; Gill v. The Continental, 8 West. Jur. 232; Re Kirkland, 12 Am. L. Reg. 300; The Circassian, id. 291; 5 Am. Law T. 482; The Augusta, id. 495; The Asa R. Swift, 1 Newb. 553; The J. F. Spencer, 5 Ben. 151; Hazlett v. The Enterprise, 17 Int. Rev. Rec. 68; The Tug Champion, 7 Chicago L. News, 1; Wilson v. Bell, 6 Chicago L. News, 261; The Circassian, 11 Blatchf. 472; The Lottawanna, 21 Wall. 558; Ship Edith, 11 Blatchf. 451. See Abb. Nat. Dig. vol. vi. pp. 392, 393, Nos. 71-75.

RULE 13. Suits for Mariners' Wages. — In all suits for mariners' wages the libellant may proceed against the ship, freight, and master, or against the ship and freight, or against the owner or the master alone *in personam*.

St. Jago de Cuba, 9 Wheat. 409; Sheppard v. Taylor, 5 Pet. 675; Steamboat Orleans v. Phœbus, 11 Pet. 175; Hammond v. Essex F. & M. Ins. Co., 4 Mason, 196; Brown v. Lull, 2 Sumn. 443; Pitman v. Hooper, 3 Sumn. 50; Foster v. The Pilot, 1 Newb. 215; Brackett v. The Hercules, Gilp. 184; Bronde v. Haven, id. 592; Lewis v. The Elizabeth and Jane, Ware, 41; L'Arina v. Exchange, Bee, 198; L'Arina v. Manwaring, id. 199; The Mary, 1 Paine, 180; The Eastern Star, Ware, 185; Brig Lang-

don Cheves, 2 Mason, 58; Skolfield v. Potter, Daveis, 392; The Island City, 1 Low, 375; The Sailor Prince, 1 Ben. 234; The Blohm, id. 229.

RULE 14. Suits for Pilotage. — In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, *in personam*.

The Anne, 1 Mason, 508; The Wave, 7 Leg. Obs. 97; Logan v. The Æolian, 1 Bond, 287.

RULE 15. Suits for Damage by Collision. — In all suits for damage by collision the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, *in personam*.

Smith *et al.* v. Condry, 1 How. 28; Waring v. Clarke, 5 How. 441; Newell v. Norton, 3 Wall. 257; Ward v. The Ogdensburgh, 1 Newb. 139; 5 McLean, 622; Hale v. Washington Ins. Co., 2 Story, 176; The America, 6 Law Reporter, n. s. 264; The Narragansett, Olc. 246.

RULE 16. Suits for Assault and Battery. — In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

Forbes v. Parsons, Crabbe, 283; Haman v. Fowle, 1 Saw. 539; Thomas v. Lane, 2 Sumn. 1; Chamberlain v. Chandler, 3 Mason, 242; Roberts v. Dallas, Bee, 239.

RULE 17. Suits for Hypothecation. — In all suits against the ship or freight founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem*, or against the master or the owner alone *in personam*.

The Aurora, 1 Wheat. 96; The Grapeshot, 9 Wall. 129; The Lulu, 10 Wall. 192; The Kalorama, id. 208; The Patapsco, 13 Wall. 329; The Neversink, 5 Blatchf. 542; O'Hara v. Ship Mary, Bee, 102; Seldon v. Hendrickson, 1 Brock. 396; Hurry v. The John and Alice, 1 Wash. C. C. 293; Crawford v. The William Penn, 3 id. 484.

RULE 18. Suits on Bottomry Bonds, when in Rem and when in Personam. — In all suits on bottomry bonds, properly so

called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrong-doer.

The Jerusalem, 2 Gall. 191; The Draco, 2 Sumn. 157; *Burke v. The P. M. Rich*, 1 Cliff. 308; *Patton v. The Randolph*, Gilp. 45.

RULE 19. Suits for Salvage. — In all suits for salvage the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

The Blackwall, 10 Wall. 1; The Davis, *id.* 15; *Eads v. The H. D. Bacon*, 1 Newb. 274; *Brevoor v. The Fair American*, 1 Pet. Adm. 87; *Gates v. Johnson*, 11 Law Reporter, N. S. 279; *Nott v. The Sabine*, 2 Woods, 211; affirmed, 101 U. S. (11 Otto) 384.

RULE 20. In Petitory and Possessory Suits. — In all petitory and possessory suits between part-owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the possession, or for the possession only, or by one or more part-owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part-owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

Fox v. The Lodemia, Crabbe, 271; *The Marengo*, 1 Sprague, 506; *The Ocean*, *id.* 535.

RULE 21. Decrees, Enforcement of. — In all cases of a final decree for the payment of money the libellant shall have a writ of execution, in the nature of a *feri facias*, commanding

the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.

Amended December Term, 1861, 1 Black, 6; *Gaines v. Travis*, Abb. Adm. 422; *The Delaware*, Olc. 240; *Harris v. Wheeler*, 8 Blatchf. 81.

RULE 22. — Informations and Libels on Seizures. — All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return-day of the process why the forfeiture should not be decreed.

The Caroline v. United States, 7 Cranch, 496; *The Anne v. United States*, id. 570; *The Hoppet v. United States*, id. 389; *The Margaret*, 9 Wheat. 421; *Wood v. United States*, 16 Pet. 342; *United States v. The Queen*, 11 Blatchf. 416.

The Caroline, 1 Brock. 384; *The Washington*, 4 Blatchf. 101; *United States v. Rectified Spirits*, 8 Blatchf. 480; *Kynoch v. The S. C. Ives*, 1 Newb. 205; *The Zenobia*, Abb. Adm. 48; *Brevoor v. The Fair American*, 1 Pet. Adm. 87; *United States v. Barrels of Alcohol*, 10 Int. Rev. Rec. 17. See 5 Ben. 4.

RULE 23. Libels in Instance Causes. — All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district; and if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libel-

lant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights *in rem*, or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

The Brig Aurora, 7 Cranch, 382; Schooner Adeline, 9 Cranch, 244; Pettingill v. Dinsmore, Daveis, 208; The Navarro, Olc. 127; Talbot v. Wakeman, 19 How. Pr. 36; West v. The Uncle Sam, McAll. 505; Distilled Spirits, 5 Ben. 5; Boon v. The Hornet, Crabbe, 426; The Boston, 1 Sumn. 328; Treadwell v. Joseph, id. 390; Thomas v. Lane, 2 Sumn. 1; The Havre, 1 Ben. 295; About 1800 Galls. Dist. Spirits, 5 Ben. 4.

RULE 24. Amendments to Libels, &c., of Course. — In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments, in matters of form, may be made at any time, on motion, to the court as of course. And new counts may be filed, and amendments, in matters of substance, may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

Newell v. Norton, 3 Wall. 257; Town v. The Western Metropolis, 28 How. Pr. 283.

RULE 25. Security for Costs, when. — In all cases of libels *in personam* the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order, in the progress of the suit.

Tharo v. Smith, 18 How. Pr. 47.

RULE 26. Claim, when to be verified. — In suits *in rem* the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made is the true and *bona fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation, with sureties in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or upon an appeal, by the appellate court.

United States v. Barrels of Alcohol, 10 Int. Rev. Rec. 17.

RULE 27. Answer to be verified. — In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.¹ [See Rule 48.]

Gammell v. Skinner, 2 Gall. 45; Teasdale v. The Rambler, Bee, 9; Coffin v. Jenkins, 3 Story, 108.

RULE 28. Exception to Answer. — The libellant may except to the sufficiency, or fulness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

The Pioneer, Deady, 58.

RULE 29. Default, Effect of. — If the defendant shall omit or refuse to make due answer to the libel upon the return-

¹ Qualified *post*, Rule 49.

day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte* and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

The David Pratt, Ware, 495.

RULE 30. Further Answer, when required. — In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

The Commander in Chief, 1 Wall. 44; *Miller v. United States*, 11 Wall. 268; *United States v. Barrels of Alcohol*, 10 Int. Rev. Rec. 17.

RULE 31. What Allegation need not be answered. — The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offence.

United States v. Packages of Pins, Gilp. 306; *The Aldebaran*, Olc. 130; *The Gustavia*, Blatchf. & H. 189.

RULE 32. Interrogatories propounded in Answer. — The defendant shall have a right to require the personal answer of the libellant, upon oath or solemn affirmation, to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or

touching any matter of defence set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the thirty-first rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

The David Pratt, Ware, 495; Gammell v. Skinner, 2 Gall. 46.

RULE 33. Verification of Answer to Interrogatory, when dispensed with. — Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dispense therewith, or may award a commission to take the answer of the defendant when and as soon as it may be practicable.

RULE 34. Intervention, how. — If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court, to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

The Mary Anne, Ware, 104; Harper v. The New Brig, Gilp. 536; United States v. Barrels of Alcohol, 10 Int. Rev. Rec. 17.

RULE 35. Stipulations, how given and taken. — The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by Rule 5 as amended.

Amended May 6, 1872, 14 Wall. xi; *Lane v. Townsend*, Ware, 286.

RULE 36. Exceptions, Effect of Allowance. — Exceptions may be taken to any libel, allegation, or answer, for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

United States v. Barrels of Alcohol, 10 Int. Rev. Rec. 17.

RULE 37. Attachment, Proceedings against Garnishee. — In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

Manro v. Almeida, 10 Wheat. 473; *Shorey v. Rennel*, 1 Sprague, 418; *McDonald v. Reunel*, 11 Law Reporter, N. S. 157.

RULE 38. Property, how brought into Court. — In cases of mariners' wages, or bottomry, or salvage, or other proceedings *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may order the same to be brought into court to answer the exigency of the suit; and upon failure of the party to

comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

The *Gran Para*, 10 Wheat. 497; *Sheppard v. Taylor*, 5 Pet. 675.

RULE 39. Non-appearance of Libellant. Dismissal. — If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy, and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

RULE 40. Decree, when may be rescinded. — The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

Steamboat New England, 3 Sumn. 495.

RULE 41. Sales of Property and Proceeds. — All sales of property under any decree of admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

The Avery, 2 Gall. 308; *Wallis v. Thornton*, 2 Brock. 422.

RULE 42. Moneys, Deposit of. — All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out except by check or checks, signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a

memorandum and copy of all the checks so drawn and the date thereof.

RULE 43. Intervenor for Proceeds, how to come in.— Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene *pro interesse suo* for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or, upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

Schuchardt v. Babbidge, 19 How. 239; *Leland v. The Medora*, 2 Woodb. & M. 92; *The L. B. Goldsmith*, 1 Newb. 123; *Brackett v. The Hercules*, Gilp. 184; *Harper v. The New Brig*, id. 536; *The Panama*, Olc. 343; *The Lottawanna*, 21 Wall. 558.

RULE 44. Reference to Commissioners, when.— In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court, to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in references to them, including the power to administer oaths to and to examine the parties and witnesses touching the premises.

Furniss v. The Magoun, Olc. 55; *Shaw v. Collier*, 18 How. Pr. 238.

RULE 45. Appeals, when made.— All appeals from the District Court to the Circuit Court must be made while the court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.

Amended May 6, 1872, 13 Wall. xiv; *The Nuestra Señora de Regla*, 17 Wall. 29; *Norton v. Rich*, 3 Mas. 443.

RULE 46. Practice, Courts to regulate.— In all cases not provided for by the foregoing rules the District and Circuit Courts are to regulate the practice of the said courts respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.

Beers v. Haughton, 9 Pet. 329.

RULE 47. Arrest, Bail when taken.— In all suits *in personam* where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the State where an arrest is made upon similar or analogous process issuing from the State courts.

Imprisonment for Debt, where abolished.— And imprisonment for debt, on process issuing out of the admiralty court, is abolished in all cases where, by the laws of the State in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a State court.

Promulgated December Term, 1850, 10 How. v; Beers v. Haughton, 9 Pet. 329; Bingham v. Wilkins, Crabbe, 50; Gaines v. Travis, 1 Abb. Adm. 422; Marshall v. Dazin, 7 N. Y. Leg. Obs. 342.

RULE 48. Answer, Sufficiency of.— The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted inconsistent with this order are hereby repealed and annulled.

Promulgated December Term, 1850, 10 How. vi.

RULE 49. Appeal, Further Proof, how taken.— Further proof taken in a Circuit Court upon an admiralty appeal shall be by deposition, taken before some commissioner appointed by a Circuit Court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of

September, 1789,¹ upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such depositions upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles' travel: *Provided*, That the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

Promulgated December Term, 1851, 13 How. vi. See *The Samuel*, 1 Wheat. 9; *The Georgia*, 7 Wall. 32; *The Ocean Queen*, 6 Blatchf. 24.

RULE 50. Oral Evidence, when admissible on Appeal. — When oral evidence shall be taken down by the clerk of the District Court pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

Promulgated December Term, 1851, 13 How. vi.

RULE 51. New Facts in Answer, how met. — When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be allowed. But within such time after the answer is filed as shall be fixed by the District Court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain, or add to the new matters set forth in the answer; and within such time

¹ See Revised Statutes, § 865.

as may be fixed, in like manner, the defendant shall answer such amendments.

Promulgated December Term, 1854, 17 How. vi.

RULE 52. I. Records on Appeal, how made up. — The clerks of the District Courts shall make up the records to be transmitted to the Circuit Courts on appeals, so that the same shall contain the following : —

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.
3. If bail was taken, or property was attached or arrested, the process of the arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.
4. The libel, with exhibits annexed thereto.
5. The pleadings of the defendant, with the exhibits annexed thereto.
6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.
7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.
8. Any order of the court to which exception was made.
9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.
10. The final decree.
11. The prayer for an appeal, and the action of the District Court thereon ; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted : —

1. The continuances.
2. All motions, rules, and orders not excepted to, which are merely preparatory for trial.
3. The commissions to take depositions, notices therefor,

their captions, and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these ; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the names of the witnesses, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to ; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question.

II. Certificate of Clerk. — The clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule ; and no other certificate of the record shall be needful or inserted.

Promulgated December Term, 1854, 17 How. vi; *The Grace Girdler*, 6 Wall. 441; *White v. Cannon*, id. 443; *The Vaughan and Telegraph*, 14 Wall. 258.

III. AMENDMENT TO RULE 52. Record on Appeal. — Hereafter, in making up the record to be transmitted to the Circuit Court on appeal, the clerk of the District Court shall omit therefrom any of the pleadings, testimony, or exhibits which the parties by their proctors shall by written stipulation agree may be omitted ; and such stipulation shall be certified up with the record.

Promulgated May 2, 1881.

RULE 53. Cross-libel, Security for Costs by Respondent. — Whenever a cross-libel is filed upon any counter-claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security, in the usual amount and form, to respond in damages as claimed in said cross-libel, unless the court, on cause shown, shall otherwise direct ; and all proceedings upon the original libel shall be stayed until such security shall be given.

Promulgated December Term, 1868, 7 Wall. v.

RULE 54. Suit for Embezzlement of Master, &c. — When any ship or vessel shall be libelled, or the owner or owners thereof shall be sued for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods, or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture done, occasioned, or incurred without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the said act above recited, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation with sureties for payment thereof into court, whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight, to a trustee to be appointed by the court under the fourth section of said act; and upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice served through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all

and any suit or suits against said owner or owners in respect of any such claim or claims.

Promulgated May 6, 1872, 13 Wall. xii; The Bristol, 4 Ben. 55.

RULE 55. Proof of Claims, before whom made. — Proof of all claims which shall be presented in pursuance of said motion, shall be made before a commissioner to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expenses) shall be divided *pro rata* amongst the several claimants in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving, however, to all parties any priority to which they may be legally entitled.

Promulgated May 6, 1872, 13 Wall. xiii; Providence & N. Y. S. S. Co., 15 Int. Rev. Rec. 193.

RULE 56. Who may defend. — In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel, for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act): *Provided*, That in his or their libel or petition he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition, and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability, under the said act of Congress, or both.

Promulgated May 6, 1872, 13 Wall. xiii.

RULE 57. Jurisdiction, where it attaches. — The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or

vessel may be libelled to answer for any such embezzlement, loss, destruction, damage, or injury; or if the said ship or vessel be not libelled, then in the District Court for any district in which the said owner or owners may be sued in that behalf. If the ship have already been libelled and sold, the proceeds shall represent the same for the purposes of these rules.

Promulgated May 6, 1872, 13 Wall. xiii.

RULE 58. Rules applicable to Circuit Courts. — All the preceding rules and regulations for proceeding in cases where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability, provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of the United States where such cases are or shall be pending in said courts upon appeal from the District Courts.

Promulgated March 30, 1881.

RULE 59. — In suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against, *in personam*, shall by petition on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing the fault or negligence in any other vessel contributing to the same collision, and particulars thereof, and that such other vessel, or any other party, ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; other parties in suit shall answer the petition. The claimant of such vessel, or such new party, shall answer the libel, and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall, upon filing his petition, give a stipulation, with sufficient sureties, to pay to libellant, and to any claimant or new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against petitioner by the court upon final decree, whether rendered in the original or appellate court, and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under the process issued on prayer of libellant.

Promulgated March 26, 1883.

RULES
OF THE
SUPREME COURT OF THE UNITED STATES
APPLICABLE IN ADMIRALTY.

AMENDMENT TO RULE 8. *The Record in causes of admiralty and maritime jurisdiction, when under the requirements of law the facts have been found in the court below, and our power of review is limited to the determination of questions of law arising on the record, shall be confined to the pleadings, the findings of fact and conclusions of law thereon, the bills of exceptions, the final judgment or decree, and such interlocutory orders and decrees as may be necessary to a proper review of the case.*

Promulgated May 2, 1881.

RULE 9. Docketing Cases. Duties of Parties. — In all cases where a writ of error or an appeal shall be brought to this court from any judgment or decree rendered thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant, as the case may be, to docket the cause and file the record thereof with the clerk of this court within the first six days of the term ; and if the writ of error or appeal shall be brought from a judgment or decree rendered less than thirty days before the commencement of the term, it shall be the duty of the plaintiff in error or appellant to docket the cause, and file the record thereof with the clerk of this court within the first thirty days of the term ; and if the plaintiff in error or appellant shall fail to

comply with this rule, the defendant in error or appellee may have the case docketed and dismissed, upon producing a certificate from the clerk of the court wherein the judgment or decree was rendered, stating the cause, and certifying that such writ of error or appeal has been duly sued out and allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the cause and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

Original Rule 16, February Term, 1803, 1 Cranch, xviii; 1 Wheat. xvi; 1 Pet. vii. Rule 19, February Term, 1806, 1 Wheat. xvi; 1 Pet. viii; Rule 32, promulgated February Term, 1821, 6 Wheat. vi. Rule 29, 1 Pet. x. Rule 43, January Term, 1835, 9 Pet. vii. Rule 63, December Term, 1853, 16 How. ix. Revised December Term, 1858, 21 How. vii.

Bingham v. Morris, 7 Cranch, 99; *The Jonquille*, 6 Wheat. 452; *Pickett v. Legerwood*, 7 Pet. 144; *Veitch v. Farmers' Bank*, 6 Pet. 777; *Yeaton v. Lenox*, 8 Pet. 123; *Owings v. Tiernan*, 10 Pet. 24; *West v. Brashear*, 12 Pet. 101; *Amis v. Pearl*, 15 Pet. 211; *Gwin v. Breedlove*, 15 Pet. 384; *Holliday v. Batson*, 4 How. 645; *United States v. Boisdoré*, 7 How. 658; *Smith v. Clark*, 12 How. 21; *Kirkland v. Union Bank of Louisiana*, 16 How. 135; *United States v. Fremont*, 18 How. 30; *Sturgess v. Harrold*, id. 40; *Steamer Virginia v. West*, 19 How. 182; *Rogers v. Law*, 21 How. 526; *Overton v. Cheek*, 22 How. 46; *Mesa v. United States*, 2 Black, 721; *Castro v. United States*, 3 Wall. 46; *Sparrow v. Strong*, id. 97; *Garrison v. Cass Co.*, 5 Wall. 823; *German v. United States*, 5 Wall. 825; *Edmonson v. Bloomshire*, 7 Wall. 306.

RULE 12. Evidence. 1. Further Proof. — In all cases where further proof is ordered by the court, the depositions which shall be taken shall be by a commission to be issued from this court, or from any Circuit Court of the United States.

Original Rule 25, promulgated February Term, 1816, 1 Wheat. xix. Rule 24, 1 Pet. ix.

Brig James Wells v. United States, 7 Cranch, 22; *Hawthorne v. United States*, id. 107; *The Western Metropolis*, 12 Wall. 389.

2. In Maritime Cases. — In all cases of admiralty and maritime jurisdiction, where new evidence shall be admissible in this court, the evidence by testimony of witnesses shall be taken under a commission to be issued from this court, or from any Circuit Court of the United States, under the direction of any judge thereof; and no such commission shall

issue but upon interrogatories to be filed by the party applying for the commission, and notice to the opposite party or his agent or attorney, accompanied with a copy of the interrogatories so filed, to file cross-interrogatories within twenty days from the service of such notice: *Provided, however*, That nothing in this rule shall prevent any party from giving oral testimony in open court in cases where, by law, it is admissible.

Original Rule 32, promulgated February Term, 1817, 2 Wheat. vii; 1 Pet. ix.

The *St. Lawrence*, 8 Cranch, 434; The *Frances*, id. 354; The *Euphrates*, id. 335; The *Mary*, id. 388; The *Grotius*, id. 456; Schooner *Adeline*, 9 Cranch, 288; The *Samuel*, 1 Wheat. 9; The *Venus*, id. 112; The *Dos Hermanos*, 2 Wheat. 77; The *London Packet*, id. 371; The *Fortuna*, 3 Wheat. 236; The *Atalanta*, id. 409; The *Freundschaft*, id. 14; The *Experiment*, 4 Wheat. 84; The *Venus*, 5 Wheat. 127; The *Western Metropolis*, 12 Wall. 389.

RULE 24. Costs. 1. On Dismissal. — In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise agreed by the parties.

Original Rule 45, promulgated January Term, 1838, 12 Pet. vii.

Winchester v. Jackson, 3 Cranch, 515; *Inglee v. Coolidge*, 2 Wheat. 363; *McIver v. Wattles*, 9 Wheat. 650; *Brown v. Union Bank of Florida*, 4 How. 466; *Strader v. Graham*, 18 How. 602.

2. On Affirmance. — In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, as the case may be, unless otherwise ordered by the court.

Original Rule 46, promulgated January Term, 1838, 12 Pet. vii.

Walton v. United States, 9 Wheat. 658; *Clerke v. Harwood*, 3 Dall. 343; *Campbell v. Gordon*, 6 Cranch, 183.

3. On Reversal. — In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, as the case may be, unless otherwise ordered by the court. The costs of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

Original Rule 22, promulgated February Term, 1810, 1 Wheat. xviii; 1 Pet. ix. Rule 47, promulgated January Term, 1838, 12 Pet. vii. Amendment, promulgated December Term, 1863, 1 Wall. v.

Montalet v. Murray, 4 Cranch, 46; *McKnight v. Craig*, 6 Cranch, 187; *Bradstreet v. Potter*, 16 Pet. 317.

4. United States exempt. — Neither of the foregoing rules shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

Original Rule 48, promulgated January Term, 1838, 12 Pet. vii.

United States v. La Vengeance, 3 Dall. 301; *United States v. Hove*, 3 Cranch, 73; *United States v. Barker*, 2 Wheat. 395; *The Antelope*, 12 Wheat. 546; *United States v. Ringgold*, 8 Pet. 163; *United States v. McLemore*, 4 How. 286; *United States v. Boyd*, 5 How. 30.

5. Mandate. — In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

Original Rule 49, promulgated January Term, 1838, 12 Pet. vii.

The Santa Maria, 10 Wheat. 431; *Skillern v. Meigs*, 6 Cranch, 267; *Ex parte Story*, 12 Pet. 344; *Poultney v. City of Lafayette*, id. 472; *Ex parte Sibbald v. United States*, id. 493; *West v. Brashear*, 14 Pet. 51; *Mitchel v. United States*, 15 Pet. 52; *Cutler v. Rae*, 7 How. 737; *Kennedy v. Bank of Georgia*, 8 How. 586; *Stafford v. Union Bank of Louisiana*, 16 How. 135; *United States v. Fremont*, 18 How. 30.

6. Costs to be inserted. — When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

Original Rule 50, promulgated January Term, 1838, 12 Pet. vii.

See *Story v. Livingston*, 13 Pet. 359.

In admiralty cases costs may be apportioned. *Penhallow v. Doane*, 3 Dall. 54.

RULE 29. Supersedeas. Bond of Indemnity. — *Supersedeas* bonds in the Circuit Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant

shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including "just damages for delay," and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages; or where the property is in the custody of the marshal, under admiralty process, as in case of capture or seizure; or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, — indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property and the costs of the suit and "just damages for delay," and costs and interest on the appeal.

Original Rule 32, promulgated December Term, 1867, 6 Wall. 7.

Rules which govern sufficiency of security, *French v. Shoemaker*, 12 Wall. 86; *Stafford v. Union Bank of Louisiana*, 18 How. 135; *Bigler v. Waller*, id. 142; *Jerome v. McCarter*, 21 Wall. 17.

REVISED STATUTES OF THE UNITED STATES

APPLICABLE IN ADMIRALTY.

SECT. 631. **Appeals in Admiralty Causes.**—From all final decrees of a District Court in causes of equity or of admiralty and maritime jurisdiction, except prize causes, where the matter in dispute exceeds the sum or value of fifty dollars, exclusive of costs, an appeal shall be allowed to the Circuit Court next to be held in such district, and such Circuit Court is required to receive, hear, and determine such appeal.

1 U. S. Stat. 83; 2 id. 244; 13 id. 310; 17 id. 196. *Mordecai v. Lindsay*, 19 How. 200; *Montgomery v. Anderson*, 21 How. 388; *United States v. Wonson*, 1 Gallis. 6; *McLellan v. United States*, id. 229; *Brig Hollen*, 1 Mason, 434.

SECT. 1007. **Supersedeas.**—In any case where a writ of error may be a *supersedeas*, the defendant may obtain such *supersedeas* by serving the writ of error, by lodging a copy thereof for the adverse party in the clerk's office where the record remains, within sixty days, Sundays exclusive, after the rendering of the judgment complained of, and giving the security required by law on the issuing of the citation. But if he desires to stay process on the judgment, he may, having served his writ of error as aforesaid, give the security required by law within sixty days after the rendition of such judgment, or afterward with the permission of a justice or judge of the appellate court. And in such cases where a writ of error may be a *supersedeas*, executions shall not issue until the expiration of ten¹ days.

1 U. S. Stat. 85; 17 id. 198. *Hogan v. Ross*, 11 How. 294; *Stafford v. Union Bank*, 16 How. 135; *Adams v. Law*, id. 144; *Hudgins v. Kemp*,

¹ As amended by act of Feb. 18, 1875.

18 How. 531; *Green v. Van Buskerk*, 3 Wall. 448; *Ex parte Milwaukee R. R. Co.*, 5 Wall. 188; *City of Washington v. Dennison*, 6 Wall. 495; *Railroad Co. v. Harris*, 7 Wall. 574; *French v. Shoemaker*, 12 Wall. 86; *Bigler v. Waller*, id. 142; *Telegraph Co. v. Eyser*, 19 Wall. 419; *Board of Commissioners v. Gorman*, id. 661.

SECT. 1008. Writs of Error and Appeals to Supreme Court, Time for taking. — No judgment, decree, or order of a Circuit or District Court, in any civil action, at law or in equity, shall be reviewed in the Supreme Court, on writ of error or appeal, unless the writ of error is brought, or the appeal is taken, within two years after the entry of such judgment, decree, or order: *Provided*, That where a party entitled to prosecute a writ of error or to take an appeal is an infant, insane person, or imprisoned, such writ of error may be prosecuted, or such appeal may be taken, within two years after the judgment, decree, or order, exclusive of the term of such disability. [See sect. 635.]

17 U. S. Stat. 196. *Thomas v. Brockenborough*, 10 Wheat. 146; *Brooks v. Norris*, 11 How. 204; *Hanger v. Abbott*, 6 Wall. 532; *The Protector*, 9 Wall. 687.

SECT. 574. Court always open for Certain Purposes. — The District Courts, as courts of admiralty, and as courts of equity, so far as equity jurisdiction has been conferred upon them, shall be deemed always open, for the purpose of filing any pleading, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, rules, and other proceedings, preparatory to the hearing, upon their merits, of all causes pending therein. And any district judge may, upon reasonable notice to the parties, make, and direct, and award, at chambers, or in the clerk's office, and in vacation as well as in term, all such process, commissions, orders, rules, and other proceedings, whenever the same are not grantable of course, according to the rules and practice of the court.

5 U. S. Stat. 517.

SECT. 858. No Witness excluded on Account of Color or Interest. — In the courts of the United States no witness shall be excluded in any action on account of color, or in any civil action because he is a party to or interested in the issue tried: *Provided*, That in actions by or against executors,

administrators, or guardians, in which judgment may be rendered for or against them, neither party shall be allowed to testify against the other, as to any transaction with, or statement by, the testator, intestate, or ward, unless called to testify thereto by the opposite party, or required to testify thereto by the court. In all other respects, the laws of the State in which the court is held shall be the rules of decision as to the competency of witnesses in the courts of the United States in trials at common law, and in equity and admiralty. [See sect. 1977.]

13 U. S. Stat. 351; 13 id. 533; 12 id. 583. *United States v. Murphy*, 16 Pet. 203; *Smyth v. Strader*, 4 How. 420; *United States v. Reid*, 12 How. 361; *Wright v. Bales*, 2 Black, 535; *Green v. United States*, 9 Wall. 655; *Lucas v. Brooks*, 18 Wall. 436; *Texas v. Chiles*, 21 Wall. 488.

SECT. 862. Mode of Proof in Equity and Admiralty Causes. — The mode of proof in causes of equity and of admiralty and maritime jurisdiction shall be according to rules now or hereafter prescribed by the Supreme Court, except as herein specially provided.

5 U. S. Stat. 518.

SECT. 863. Depositions De Bene Esse. — The testimony of any witness may be taken in any civil cause depending in a District or Circuit Court by deposition *de bene esse*, when the witness lives at a greater distance from the place of trial than one hundred miles, or is bound on a voyage to sea, or is about to go out of the United States, or out of the district in which the case is to be tried, and to a greater distance than one hundred miles from the place of trial, before the time of trial, or when he is ancient and infirm. The deposition may be taken before any judge of any court of the United States, or any commissioner of a Circuit Court, or any clerk of a District or Circuit Court, or any chancellor, justice, or judge of a Supreme or Superior Court, mayor or chief magistrate of a city, judge of a County Court or Court of Common Pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the cause. Reasonable notice must first be

given in writing by the party or his attorney proposing to take such deposition, to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition; and in all cases *in rem*, the person having the agency or possession of the property at the time of seizure shall be deemed the adverse party, until a claim shall have been put in; and whenever, by reason of the absence from the district and want of an attorney of record or other reason, the giving of the notice herein required shall be impracticable, it shall be lawful to take such depositions as there shall be urgent necessity for taking, upon such notice as any judge authorized to hold courts in such circuit or district shall think reasonable and direct. Any person may be compelled to appear and depose as provided by this section, in the same manner as witnesses may be compelled to appear and testify in court.

1 U. S. Stat. 88; 3 id. 350; 10 id. 163; 10 id. 315; 17 id. 89.

When authorized, *Allen v. Blunt*, 2 Woodb. & M. 122; *Buckingham v. Burgess*, 3 McLean, 368; *Curtis v. Central R. R.*, 6 McLean, 401; *Pettibone v. Derringer*, 4 Wash. C. C. 215; *Prouty v. Draper*, 2 Story, 199; *Russell v. Ashley*, Hempst. 546; *Tooker v. Thompson*, 3 McLean, 92. Conditions enumerated, *Harris v. Wall*, 7 How. 693. To be taken by commission, *The Argo*, 2 Wheat. 287; *The London Packet*, id. 371; *Patapasco Ins. Co. v. Southgate*, 5 Pet. 616; *Stein v. Bowman*, 13 Pet. 209; *Hoyt v. Hammekin*, 14 How. 350. Who may take, *Fowler v. Merrill*, 11 How. 375; *Price v. Morris*, 5 McLean, 4; *Ruggles v. Bucknor*, 1 Paine C. C. 358; *Voce v. Lawrence*, 4 McLean, 203; *Whitney v. Hunt*, 5 Cranch C. C. 120. Strict conformity to statute required, *Shutte v. Thompson*, 15 Wall. 151; *Bell v. Morrison*, 1 Pet. 355; *Evans v. Hettich*, 3 Wash. C. C. 409; *Luther v. The Merritt Hunt*, Newb. 4; *Thorpe v. Simmons*, 2 Cranch C. C. 195; *Edmondson v. Barrell*, id. 228. Notice to adverse party, *The Argo*, 2 Gall. 314; *Barrell v. Limington*, 4 Cranch C. C. 70; *Bell v. Newmon*, 4 McLean, 539; *Buddicum v. Kirke*, 3 Cranch, 293; *Bussard v. Catalino*, 2 Cranch C. C. 421; *Cahoon v. Ring*, 1 Cliff. 592; *Carrington v. Stimson*, 1 Curt. 437; *Debatts v. McCulloch*, 1 Cranch C. C. 286; *Dick v. Runnels*, 5 How. 7; *Dinsmore v. Maroney*, 4 Blatchf. 416; *Goodhue v. Bartlett*, 5 McLean, 186; *Merrill v. Dawson*, Hempst. 563; *Miller v. Young*, 2 Cranch C. C. 53; *Nelson v. Woodruff*, 1 Black, 156; *The Samuel*, 1 Wheat. 16; *Walsh v. Rogers*, 13 How. 233; *Wilkinson v. Yale*, 6 McLean, 18. Cross-examination, right of, *Dade v. Young*, 1 Cranch C. C. 123; *The Ottawa*, 3 Wall. 271; *Tappan v. Beardsley*,

10 Wall. 427. Compulsion of witness, *Barnet v. Day*, 3 Wash. C. C. 243; *Ex parte Humphrey*, 2 Blatchf. 228; *In re Judson*, 3 Blatchf. 148; *Ex parte Beck*, id. 113. Certificate, sufficiency of, *Banks v. Miller*, 1 Cranch C. C. 543; *Brown v. Piatt*, 2 Cranch C. C. 253; *Centre v. Keene*, id. 198; *Garrett v. Woodward*, id. 190; *Moore v. Nelson*, 3 McLean, 384; *Paul v. Lowry*, 2 Cranch C. C. 628; *Peyton v. Veitch*, id. 123; *Rainer v. Haynes*, Hempst. 689; *Vasse v. Smith*, 2 Cranch C. C. 31; *Woodward v. Hall*, id. 235. Caption, sufficiency of, *Wheaton v. Love*, 1 Cranch C. C. 451; *Van Ness v. Heinecke*, 2 Cranch C. C. 259. Objections, when to be taken, *Mechanics' Bank v. Seaton*, 1 Pet. 307; *The Thomas and Henry v. United States*, 1 Brock. 367; *United States v. Case of Hair Pencils*, 1 Paine C. C. 400.

SECT. 864. Mode of taking Depositions De Bene Esse.— Every person deposing as provided in the preceding section, shall be cautioned and sworn to testify the whole truth, and carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or by himself in the magistrate's presence, and by no other person, and shall, after it has been reduced to writing, be subscribed by the deponent.

1 U. S. Stat. 88; 17 id. 89. *Bell v. Morrison*, 1 Pet. 351; *Patapsco Ins. Co. v. Southgate*, 5 Pet. 604; *Cook v. Burnley*, 11 Wall. 659; *Shutte v. Thompson*, 15 Wall. 151; *Moore v. Nelson*, 3 McLean, 383; *Jones v. Knowles*, 1 Cranch C. C. 523; *Marstin v. McRea*, Hempst. 688; *Rainer v. Haynes*, Hempst. 689; *Thorpe v. Simmons*, 2 Cranch C. C. 195; *Centre v. Keene*, id. 198; *Edmondson v. Barrell*, id. 228; *Bussard v. Catalino*, id. 421.

SECT. 865. Transmission to the Court of Depositions De Bene Esse.— Every deposition taken under the two preceding sections shall be retained by the magistrate taking it, until he delivers it with his own hand into the court for which it is taken; or it shall, together with a certificate of the reasons as aforesaid of taking it and of the notice, if any, given to the adverse party, be by him sealed up and directed to such court, and remain under his seal until opened in court. But unless it appears to the satisfaction of the court that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that, by reason of age, sickness, bodily infirmity, or imprisonment, he is unable to travel and

appear at court, such deposition shall not be used in the cause.

1 U. S. Stat. 88. *Beale v. Thompson*, 8 Cranch, 70; *Evans v. Hettich*, 7 Wheat. 453; *Harris v. Wall*, 7 How. 693; *Shankwiker v. Reading*, 4 McLean, 240; *Thorp v. Orr*, 2 Cranch C. C. 335.

SECT. 866. Depositions under a *Dedimus Potestatem* and in *Perpetuam*, &c. — In any case where it is necessary, in order to prevent a failure or delay of justice, any of the courts of the United States may grant a *dedimus potestatem* to take depositions according to common usage; and any Circuit Court, upon application to it as a court of equity, may, according to the usages of chancery, direct depositions to be taken in *perpetuam rei memoriam*, if they relate to any matters that may be cognizable in any court of the United States. And the provisions of sections eight hundred and sixty-three, eight hundred and sixty-four, and eight hundred and sixty-five, shall not apply to any deposition to be taken under the authority of this section.

1 U. S. Stat. 88; 17 id. 89; *Guppy v. Brown*, 4 Dall. 410; *Buddicum v. Kirk*, 3 Cranch, 293; *Sergeant v. Biddle*, 4 Wheat. 508; *Evans v. Hettich*, 7 Wheat. 453; *Gilpins v. Consequa*, Pet. C. C. 85; *Nelson v. United States*, id. 235; *Willings v. Consequa*, id. 301; *Winthrop v. Union Ins. Co.*, 2 Wash. C. C. 7; *Richardson v. Golden*, 3 Wash. C. C. 109; *Bell v. Davidson*, id. 332; *Lonsdale v. Brown*, id. 404; *Dodge v. Israel*, 4 Wash. C. C. 323; *The Schooner Ruby*, 5 Mason, 451; *Cunningham v. Otis*, 1 Gall. 166; *Leroy v. Delaware Ins. Co.*, 2 Wash. C. C. 223; *United States v. Price*, id. 356; *Boudereau v. Montgomery*, 4 Wash. C. C. 186; *Peters v. Prevost*, 1 Paine, 64; *Jones v. Or. C. R. R. Co.*, 8 Ch. L. N. 115.

SECT. 867. Depositions in *Perpetuam*, &c., admissible at Discretion of the Court. — Any court of the United States may, in its discretion, admit in evidence in any cause before it any deposition taken in *perpetuam rei memoriam*, which would be so admissible in a court of the State wherein such cause is pending, according to the laws thereof.

2 U. S. Stat. 682. *Gould v. Gould*, 3 Story, 516.

SECT. 868. Deposition under a *Dedimus Potestatem*, how taken. — When a commission is issued by any court of the United States for taking the testimony of a witness named therein at any place within any district or Territory, the clerk of any court of the United States for such district or Territory shall,

on the application of either party to the suit, or of his agent, issue a subpoena for such witness, commanding him to appear and testify before the commissioner named in the commission, at a time and place stated in the subpoena; and if any witness, after being duly served with such subpoena, refuses or neglects to appear, or, after appearing, refuses to testify, not being privileged from giving testimony, and such refusal or neglect is proven to the satisfaction of any judge of the court whose clerk issues such subpoena, such judge may proceed to enforce obedience to the process, or punish the disobedience, as any court of the United States may proceed in case of disobedience to process of subpoena to testify issued by such court.

4 U. S. Stat. 197. *York Co. v. Central R. R.*, 3 Wall. 113; *Sergeant v. Biddle*, 4 Wheat. 508.

SECT. 869. Subpoena Duces Tecum under a Dedimus Potestatem. — When either party in such suit applies to any judge of a United States court in such district or Territory for a subpoena commanding a witness, therein to be named, to appear and testify before said commissioner, at the time and place to be stated in the subpoena, and to bring with him and produce to such commissioner any paper or writing or written instrument or book or other document, supposed to be in the possession or power of such witness, and to be described in the subpoena, such judge, on being satisfied by the affidavit of the person applying, or otherwise, that there is reason to believe that such paper, writing, written instrument, book, or other document is in the possession or power of the witness, and that the same, if produced, would be competent and material evidence for the party applying therefor, may order the clerk of said court to issue such subpoena accordingly. And if the witness, after being served with such subpoena, fails to produce to the commissioner, at the time and place stated in the subpoena, any such paper, writing, written instrument, book, or other document, being in his possession or power, and described in the subpoena, and such failure is proved to the satisfaction of said judge, he may proceed to enforce obedience to said process of subpoena, or punish the disobedience in like manner as any court of the United States may

proceed in case of disobedience to like process issued by such court. When any such paper, writing, written instrument, book, or other document is produced to such commissioner, he shall, at the cost of the party requiring the same, cause to be made a correct copy thereof, or of so much thereof as shall be required by either of the parties.

4 U. S. Stat. 199. 1 Burr's Trial, 183.

SECT. 870. Witness under a Dedimus Potestatem. — No witness shall be required, under the provisions of either of the two preceding sections, to attend at any place out of the county where he resides, nor more than forty miles from the place of his residence, to give his deposition; nor shall any witness be deemed guilty of contempt for disobeying any subpoena directed to him by virtue of either of the said sections, unless his fees for going to, returning from, and one day's attendance at, the place of examination, are paid or tendered to him at the time of the service of the subpoena.

4 U. S. Stat. 197, 199.

SECT. 875. Letters Rogatory from United States Courts. — When any commission or letter rogatory, issued to take the testimony of any witness in a foreign country, in any suit in which the United States are parties or have an interest, is executed by the court or the commissioner to whom it is directed, it shall be returned by such court or commissioner to the minister or consul of the United States nearest the place where it is executed. On receiving the same, the said minister or consul shall indorse thereon a certificate, stating when and where the same was received, and that the said deposition is in the same condition as when he received it; and he shall thereupon transmit the said letter or commission, so executed and certified, by mail, to the clerk of the court from which the same issued, in the manner in which his official dispatches are transmitted to the government. And the testimony of witnesses so taken and returned shall be read as evidence on the trial of the suit in which it was taken, without objection as to the method of returning the same. [See sects. 4071, 4074.]

12 U. S. Stat. 770. *Nelson v. United States*, Pet. C. C. 235.

SECT. 940. In Cases of Seizure, Bailing of Property in Vacation.— In any cause of admiralty and maritime jurisdiction, or other case of seizure, depending in any court of the United States, any judge of the said court, in vacation, shall have the same authority to order any vessel, or cargo, or other property to be delivered to the claimants, upon bail or bond, or to be sold when necessary, as the said court has in term time, and to appoint appraisers, and exercise every other incidental power necessary to the complete execution of the authority herein granted; and the recognizance of bail or bond, under such order, may be executed before the clerk upon the party's producing the certificate of the collector of the district, of the sufficiency of the security offered; and the same proceedings shall be had in case of said order of delivery or of sale as are had in like cases when ordered in term time: *Provided*, That upon every such application, either for an order of delivery or of sale, the collector and the attorney of the district shall have reasonable notice in cases of the United States, and the party or counsel in all other cases.

4 U. S. Stat. 503; 1 id. 695, 696; 1 id. 176; 1 id. 298; 1 id. 317.

SECT. 941. Delivery Bond in Admiralty Proceedings.— When a warrant of arrest or other process *in rem* is issued in any cause of admiralty jurisdiction, except the cases of seizure for forfeiture under any law of the United States, the marshal shall stay the execution of such process, or discharge the property arrested if the process has been levied, on receiving from the claimant of the property a bond or stipulation in double the amount claimed by the libellant, with sufficient surety, to be approved by the judge of the court where the cause is pending, or, in his absence, by the collector of the port, conditioned to answer the decree of the court in such cause. Such bond or stipulation shall be returned to the court, and judgment thereon, against both the principal and sureties, may be recovered at the time of rendering the decree in the original cause.

9 U. S. Stat. 181; 1 id. 695, 696; 1 id. 176; 1 id. 298; 1 id. 317.

AN ACT

TO FACILITATE THE DISPOSITION OF CASES IN THE SUPREME COURT OF THE UNITED STATES, AND FOR OTHER PURPOSES.

SECT. 1. Findings in Circuit Courts in Admiralty Cases. Jury.
Review. — *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Circuit Courts of the United States, in deciding causes of admiralty and maritime jurisdiction on the instance side of the court, shall find the facts and the conclusions of law upon which it renders its judgments or decrees, and shall state the facts and conclusions of law separately. And in finding the facts, as before provided, said court may, upon the consent of the parties who shall have appeared and put any matter of fact in issue, and subject to such general rules in the premises as shall be made and provided from time to time, impanel a jury of not less than five and not more than twelve persons, to whom shall be submitted the issues of fact in such cause, under the direction of the court, as in cases at common law. And the finding of such jury, unless set aside for lawful cause, shall be entered of record, and stand as the finding of the court, upon which judgment shall be entered according to law. The review of the judgments and decrees entered upon such findings by the Supreme Court, upon appeal, shall be limited to a determination of the questions of law arising upon the record, and to such rulings of the Circuit Court, excepted to at the time, as may be presented by a bill of exceptions, prepared as in actions at law.

SECT. 3. Jurisdiction on Appeal, Matter in Dispute. — That whenever, by the laws now in force, it is required that the matter in dispute shall exceed the sum or value of two thousand dollars, exclusive of costs, in order that the judgments and decrees of the Circuit Courts of the United States may be re-examined in the Supreme Court, such judgments and decrees hereafter rendered shall not be re-examined in the Supreme

Court unless the matter in dispute shall exceed the sum or value of five thousand dollars, exclusive of costs.

SECT. 4. That this act shall take effect on the first day of May, 1875.

Approved February 16, 1875.

PRACTICAL FORMS.

FORM No. 1.

LIBEL IN REM—GENERAL FORM.

DISTRICT COURT OF THE UNITED STATES, } *In Admiralty.*
District of

To the Honorable Judge of the District Court of the
United States in and for the District of

The libel of A. B., of the city of (merchant), against
the (ship) whereof C. D. is or lately was master, her
tackle, apparel, and furniture, and against all persons inter-
vening for their interest in the said vessel in a cause of con-
tract, civil and maritime [*or, a cause of subtraction of wages,*
civil and maritime; *or, a cause of pilotage, civil and mari-*
time; *or, a cause of wharfage, civil and maritime; or, a*
cause of collision, civil and maritime; *or, a cause of damage,*
civil and maritime], alleges as follows:—

First. That (*here set forth the facts constituting the cause of
action in distinct articles. The last article to be as follows:*)

Sixth. That all and singular the premises are true, and
within the admiralty and maritime jurisdiction of the United
States and of this honorable court.

Wherefore the libellant prays that process in due form of
law, according to the course of this honorable court, in cases
of admiralty and maritime jurisdiction, may issue against the
said [ship], her tackle, apparel, furniture, and that all per-
sons claiming any right, title, or interest in the said ship may
be cited to appear and to answer upon oath all and singular
the matters aforesaid, and that this honorable court would be

pleased to decree [*according to the case, as, for instance, the payment of his aforesaid damages, or, such compensation and reward by reason of the premises as shall appear to be just and reasonable*], with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive. [*And if the libellant sees fit to put interrogatories, then add*]: And further, that the said C. D. or other person or persons intervening for his or their interest may be required to answer the interrogatories hereunto annexed.

(Signed by) A. B., *Libellant*.

— — — *Proctor*.

On the day of 18 appeared personally A. B.,
the above-named libellant, and was sworn to the truth of
the foregoing libel. Before me,

— — —
Clerk or Commissioner.

[*Interrogatories referred to in Foregoing Libel.*]

1st. —

2d. —, &c., &c.

[*Schedule of Account referred to in Foregoing Libel.*]

— feet of ship plank, &c., &c. —

Of which there has been paid to the libellant the sum of —

— ♦ —
FORM NO. 2.

LIBEL IN A SUIT *IN REM*, FOR LABOR, MATERIALS, OR
SUPPLIES FURNISHED IN REPAIRING, FITTING OUT,
OR FURNISHING A FOREIGN MARITIME VESSEL.

[*Commence as in No. 1.*]

First. That the said (ship) was, at the time when
the repairs (*or supplies*) hereinafter mentioned were made
(*or furnished*), a foreign vessel, owned by some person or
persons not residing in the State of (*insert the name of*
the State in which the services were rendered, or materials or

necessaries supplied), and who are to the libellant unknown (*or, if the owner and his residence are known, state his name and residence*), and is of the burthen of about tons.

Second. That on or about the day of 18 the said (ship) then lying at the port of in the State of (*the State in which the services were rendered, or the materials or supplies furnished*), and within the admiralty and maritime jurisdiction of the United States, the said C. D., master of the said (ship), represented to the said libellant that the said (ship) stood in need of the repairs (*or supplies*), hereinafter mentioned, in order to render her seaworthy and competent to proceed to sea on her intended voyage, and requested the libellant to make such repairs (*or furnish such supplies*); and that the libellant, in pursuance of such representation and request, on the day and at the place last above mentioned, undertook to repair, and did repair (*or, furnish supplies for, and did supply*) the said (ship), by removing from her hull several courses of worn and decayed plank, and replacing them by new plank; making and hanging a new rudder; putting a new fluke on her sheet anchor; caulking her upper seams; mending her sails and rigging (*&c., as the case may be; or, by furnishing, for the use of the said ship, one new chain cable, one long-boat, four spars, one topsail, a large quantity of provisions, consisting of ship bread, vegetables, pork, and other ship stores, &c.*), which repairs (*or supplies*), and the value thereof, are truly and more particularly stated and described in the schedule or account hereto annexed, and which amount in the whole to dollars and cents.

Third. That the said repairs (*or supplies*) were so made (*or furnished*) by the libellant, on the credit of the said (ship), as well as of the owners and the said master thereof; and were suitable, proper, and necessary for the purpose of enabling the said (ship) to proceed to sea with safety.

Fourth. That the aforesaid sum of dollars and cents still remains wholly unpaid and due to the libellant (*or, if a part has been paid, add, except the sum of mentioned in the schedule, or account hereunto annexed*), al-

though the libellant has often requested the said C. D., the aforesaid master of the said ship, to pay the same.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 3.

LIBEL IN REM AGAINST A DOMESTIC VESSEL BY A SHIP-JOINER FOR LABOR AND MATERIALS, TO ENFORCE A STATE LIEN.

[*Commence as in No. 1.*]

First. That the said ship is a domestic ship, and is now owned, or was, at the time hereinafter mentioned, owned by some persons who are resident in the State of who are to the libellant unknown, but who, as he is informed and believes, reside in the city of

Second. That the said ship, in the month of last, being in the port of in the district aforesaid, the libellant furnished certain materials, and performed certain labor as a ship-joiner (the particulars of which are mentioned and set forth in the schedule hereto annexed), towards the altering, equipping, and finishing the said ship, at the request of the said master, and at the prices in the said schedule mentioned. That the charges in said account are just and reasonable, and that said materials furnished, and such labor done upon the said vessel, were necessary and proper, to the altering, equipping, and finishing the said ship.

Third. That the said labor was performed upon the said vessel, and that said materials so furnished have gone into said ship, and have become part thereof; and that the said repairs done, labor performed, and material furnished amount to the sum of dollars and cents, and that the labor was done and materials furnished upon the credit of said vessel, as well as of the master and owners thereof.

Fourth. That the amount due for said labor performed upon the said vessel, and for such materials furnished to her, is by the law of the State of a lien upon the said vessel, her

tackle, apparel, and furniture, and that this libellant has (*here state a compliance with the proceedings necessary to make the claim a lien under the State law*).

Fifth. That the said libellant has repeatedly requested the said master to pay him the said sum of dollars and cents, but that the said master has not paid the same, and still neglects and refuses so to do, and that the said sum now remains entirely due and unpaid.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 4.

LIBEL IN SUIT *IN REM* FOR PILOTAGE.

[*Commence as in No. 1.*]

First. That on or about the day of 18 the libellant was a pilot duly licensed and qualified according to the laws of the State of and of the statutes of the United States in such cases made and provided, to pilot vessels to and from the port of by way of that being then on board the pilot boat upon the high seas, and on waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit (about one mile southeasterly from the white buoy on the eastern edge of the outer middle, near the bar), seeing a signal for a pilot from a ship approaching from the southeast, which proved to be the ship drawing feet water, and bound to the port of he immediately went on board the said ship, whereof the aforesaid C. D. was then master, took charge of her helm, and piloted her safely to her anchorage (*or moorings, or to a wharf, describing it*), in the port of aforesaid, as directed by the said master. (*If, owing to the tempestuous state of the weather, the disabled condition of the ship, or other cause, the service was attended with extraordinary danger, or required extraordinary exertion or skill, justly entitling the libellant, in his opinion, to extra compensation, state the circumstances in a separate article.*)

Second. That for the services mentioned in the first article the libellant is entitled by law to demand and receive of and from the said master or owner of the said ship the sum of dollars.

(*If extraordinary services are set forth, as above mentioned, add in a separate article: That by reason of the extraordinary peril, care, skill, and exertions mentioned in the second article, the libellant deserves to have and receive of and from the said master or owner the further sum of dollars.*)

Third. That neither the said master nor the said owner has paid to the libellant either of the said sums of money or any part thereof, although often requested so to do; and the same remain wholly unpaid and due.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]



FORM No. 5.

LIBEL IN SUIT *IN REM* FOR WHARFAGE.

[*Commence as in No. 1.*]

First. That the libellant is, and at the time hereinafter mentioned was, the owner of a certain wharf in the harbor of the said port of

Second. That the (ship) being of the burthen of tons or thereabouts, was at the time hereinafter mentioned a maritime vessel, employed in the business of navigation and commerce on waters within the admiralty jurisdiction of the United States and of this court.

Third. That the said (ship), on or about the day of 18 at the instance and request of the said C. D., then master thereof, was received by the libellant as such wharfinger and moored at the said wharf, where, through the care of the libellant, his agents and servants, she has lain in safety to the present time.

Fourth. That the libellant is informed, and verily believes, that the said C. D., master as aforesaid, is preparing and in-

tends very shortly to remove the said (ship) from the said wharf, and immediately to proceed with her to sea, without the consent of the libellant and without paying wharfage therefor.

Fifth. That, according to the customary rate of compensation paid for the wharfage of such vessels at the port aforesaid, the libellant is well entitled, by reason of the premises, to demand and have (*or*, that by reason of the premises the libellant reasonably deserves to have), for the wharfage of the said (ship), of and from the said C. D., as aforesaid, or from the owner of the said (ship), the sum of and that neither the said master nor the owner has paid the same, nor any part thereof, although often requested, and the same remains wholly unpaid and due to the libellant.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]



FORM No. 6.

LIBEL IN REM BY THE OWNER OF A STEAMER AGAINST A CANAL-BOAT FOR TOWING HER.

[*Commence as in No. 1.*]

First. That the said libellants were, and now are, the owners of the American steamer and that at the instance and request of one Captain C. D., master and owner of said canal-boat, the said steamer towed the said canal-boat from the port of to the port of between the ninth and eleventh days of November, 18 and, by agreement with the said Captain C. D., were to receive for the towing of the said canal boat the sum of twenty dollars; and the said libellants have demanded the said twenty dollars, and the said captain has refused to pay the same.

Second. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 7.

LIBEL IN SUIT *IN REM* FOR THE NON-FULFILMENT OF A
CONTRACT OF AFFREIGHTMENT FOR THE CONVEY-
ANCE OF GOODS IN A GENERAL SHIP.

[Commence as in No. 1.]

First. That on or about the day of 18 the said ship or vessel whereof the said C. D. was master, being then in the port of and designed on a voyage upon the high seas and on waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit, from the said port of to the libellant being the owner of (*here describe the goods shipped, as, for example, five hundred barrels of wheaten flour,*) of the value of dollars, made a contract with the said C. D., as such master, whereby he agreed, in consideration of certain freight, to convey the said (flour) from the said port of to aforesaid, and there to deliver the same in good order and condition to saving and excepting only such loss and damage as might happen by perils of the seas; that the libellant on the same day delivered to the said master the said (flour) in good order, and received from him a bill of lading therefor.

Second. That the said ship shortly afterwards departed on her said voyage; but the said C. D., master as aforesaid, not regarding his duty in that respect, nor his promise and undertaking to convey and deliver the said (flour) as aforesaid, did not so convey and deliver the same (although no danger of the seas prevented him from so doing); but, on the contrary thereof, so negligently and carelessly conducted himself with respect to the said (flour), that by and through the mere carelessness, negligence, and improper conduct of the said C. D. and his mariners and servants, the said (flour) became and was wholly lost to the libellant (*or wetted and greatly damaged, as the case may be*), by reason whereof the libellant has sustained damage to the amount of dollars, for which he claims reparation in this suit.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]



FORM No. 8.

LIBEL *IN REM* AND *IN PERSONAM* AGAINST A VESSEL
AND OWNER, ON A CHARTER-PARTY, FOR THE VIO-
LATION OF THE CHARTER.

[*Commence as in No. 1.*]

First. That the said C. D. having on the sixth day of January, one thousand eight hundred and as master and owner of the said schooner of of the burthen of one hundred and twenty-seven tons, or thereabouts, then lying in the harbor of chartered the said vessel unto the libellant for a voyage from the port of to such landing or landings in or waters emptying into the same, as the libellant might designate — there to take on board a full cargo of live-oak timber, and return to the at in the port and harbor of on the following terms, that is to say: First. The said C. D. engaged that the said vessel, during said voyage, should be kept tight, stanch, and well fitted, tackled and provided with every requisite, and with men and provisions necessary for such a voyage. Second. That the whole of said vessel, with the exception of the cabin and the necessary room for the accommodation of the crew, and the sails, cables, and provisions, should be at the sole use and disposal of the libellant during the voyage aforesaid. Third. That he would take and receive on board the said vessel during the aforesaid voyage all such lawful goods and merchandise as the libellant or his agent might think proper to ship (excepting lime, and all other extra hazardous articles), and a gang of men not exceeding twelve in number, and to find them in good wholesome provisions, one of whom was to have cabin accommodations, and the others to have steerage fare only. And the libellant agreed with the said C. D. to charter and hire the said vessel as aforesaid on the following

terms, that is to say : First. The libellant engaged to provide and furnish to the said vessel outward, one hundred barrels more or less of heavy freight, and from eight to twelve passengers, who were to be accommodated in the manner aforesaid ; also to furnish a full return cargo of live-oak timber. Second. To pay the said C. D., or his agent, for the charter or freight of said vessel, during the voyage aforesaid, for each passenger the sum of ten dollars ; for the outward freight, nothing ; and for the return cargo, the sum particularly mentioned in the said charter-party ; and it was further understood and expressly agreed in and by the said charter-party that the said vessel should be ready to receive said outward freight the fourth day of January, 18 and should sail on such voyage the seventh day of January, 18 and that said charter-party should commence the fourth day of January, 18 and that said C. D. should have the privilege of filling with freight, for his own special benefit, such part of said vessel as might not be required by the libellant on her outward voyage, provided there should be no detention on that account ; and that on the signing of the said charter-party the libellant should pay the passage-money aforesaid, and should advance a further sum, in all amounting to three hundred and fifty dollars ; that to the true and faithful performance of the said charter-party the said C. D. and the libellant, each to the other, bound themselves and their heirs, executors, administrators, and assigns, and also the said vessel, her freight, tackle, appurtenances, and the merchandise to be laden on board, in the penal sum of one thousand dollars.

Second. That at and immediately after the making of the said charter-party the libellant provided and furnished to the said vessel, for her said outward voyage, one hundred barrels, more or less, of heavy freight, the same not consisting of lime nor of other extra hazardous articles, and also ten passengers, to be accommodated in the manner provided by said charter-party, and pay to the said C. D. for each of the said passengers the sum of ten dollars, the same being in advance for their passage-money ; and did also advance to the said C. D. the further sum of two hundred and

fifty dollars on account of the said charter-party, and to be deducted from the amount of freight-money on the return of the said C. D. to New York, — making in all the sum of three hundred and fifty dollars, as required by the said charter-party.

Third. That the libellant has well and truly performed and kept all the covenants and undertakings on his part, in the said charter-party to be performed and kept, but neither the said C. D. nor the said vessel has well and truly performed and kept the covenants and undertakings on the part of the said C. D., and of the said vessel, according to the said charter-party to be performed and kept.

Fourth. That after the libellant had provided and furnished the said freight and passengers for the outward voyage aforesaid, and had paid and advanced the said sum of money, as hereinbefore mentioned, the said C. D. did not, nor did said vessel, sail on the said voyage on the seventh day of January, 18 nor with reasonable dispatch, but without any just or reasonable cause delayed and remained in the port of
 until the day of 18 to the great injury and risk of loss of the libellant.

Fifth. That the said C. D., under pretence that a part of said vessel was not required by the libellant on her outward voyage, took on board, for his own special benefit, a large quantity of goods and merchandise other than those provided and furnished by the libellant; and the whole of the said vessel, with the exception of the cabin and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions, was not at the sole use and disposal of the libellant during the voyage aforesaid.

Sixth. That said C. D. detained the said vessel for the purpose of taking on board the said vessel, for his own special benefit, on her outward passage goods and merchandise other than those provided and furnished by the libellant; and by so taking on board of the said vessel, for his own special benefit, goods and merchandise other than those provided and furnished by the libellant, impeded her voyage and subjected the vessel to the difficulties which afterwards occurred.

Seventh. And the libellant further alleges and propounds,

that in the said charter-party mentioned, otherwise called is situate on the coast of and the said vessel ought to have performed her voyage thither from the port of in a period of time not exceeding thirty days from her departure ; but the said C. D. and the said vessel left the port of on the day of 18 and on the day of 18 the said vessel put into the port of not having performed one-half of her said outward voyage.

Eighth. That the course and conduct of the said C. D. and the management of the said vessel were such, that all the passengers, furnished by the libellant as aforesaid, either left the vessel at for good cause, or were discharged by the said C. D., who made no offer of carrying them forward on the said voyage, whereby the libellant was deprived of all the gains and advantages which he should, and ought to, and would have obtained from the carriage of the said passengers.

Ninth. That on the arrival of the said vessel at and between the and days of 18 the said C. D. caused a large part of the goods and merchandise so supplied and put on board of said vessel by the libellant to be sold, and received the profits thereof, but has not rendered any account thereof to the libellant, nor paid for the same ; which goods and merchandise so sold were of the value to the libellant of at least dollars.

Tenth. That the said C. D., on or about the day of 18 caused other parts of the goods and merchandise so supplied and put on board of said vessel by the libellant to be shipped from to of the agent of said C. D., but directed said agent not to deliver the same to the libellant, except upon the payment of freight, whereby the libellant is required to pay a large sum as freight, in order to obtain possession of said goods.

Eleventh. That on the arrival of said vessel at as aforesaid, the said C. D. refused to proceed on the said voyage, before 18 and wholly broke up the said voyage ; nor did he offer to proceed on the said voyage before 18 and wholly broke up the said voyage ;

nor did he offer to proceed before that time, nor to carry said passengers or freight; nor did the libellant accept said goods at that port; nor did the said C. D. earn any part of the freight, either for the said passengers or the said goods supplied by the libellant, nor become entitled to the same; but became and is liable to refund the sum so paid him by the libellant as aforesaid, and also became liable to pay for the said goods so shipped by the libellant, and also the said sum of one thousand dollars mentioned and stipulated in the said charter-party.

Twelfth. That the said vessel having brought on a cargo from to and taken in a cargo at for arrived in the port of on the day of instant, and neither the said C. D., nor any one on his behalf, nor in behalf of the said vessel, has paid to the libellant any part of the said sum of three hundred and fifty dollars, nor the said sum of one thousand dollars, or any part thereof, nor any sum whatever, on account of the said charter-party, or the damages for the violation thereof, nor on account of the sale and conversion of the articles belonging to the libellant, nor returned said articles to the libellant, nor in any way afforded him any satisfaction in the premises.

Thirteenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]



FORM NO. 9.

LIBEL IN REM FOR COLLISION.

[*Commence as in No. 1.*]

First. That your libellants, before and at the time of the collision hereinafter in the third article mentioned, were the owners and proprietors of a certain steamboat, called the with her steam engine, boilers, machinery, tackle, apparel and furniture; which said steamboat your libellants used

and employed in transporting passengers and freight between the port of and the port of in the State of and between which said ports she was regularly run, daily and every day, Sundays excepted, for the purpose aforesaid.

Second. That on the day of in the year 18 the said steamboat with her steam engine, boilers, fixtures, apparel, and furniture on board thereof, was safely moored and lying at her usual berth alongside of the pier or dock at the foot of street, in said city of where she had a perfect right to be; and the said steamboat being then, and also at the time when she was run into as hereinafter mentioned, tight, stanch, strong, and in every respect well manned, tackled, apparelled, and appointed, and having the usual and necessary complement of officers and men, and that the master and crew engaged on board were on the lookout for the protection and safety of the vessel.

Third. That on the morning of said day, and while the said steamboat was safely moored as aforesaid, the said ship whereof E. F. was master, on her way from in the kingdom of to her destination at said city of came up the between and passing at the distance of about four or five hundred feet from the docks of said city on said river, with a strong wind from the west-south-west, and with a flood tide; and then and there with great force and violence ran into and upon the said steamboat, and did thereby cause great damage and injury to the said her guards, hull, and stern, and remained foul of and upon the said for some time, and until she (the ship) swayed round, when she cleared and passed on.

Fourth. That the said ship before and at the time of the said collision, on a voyage from to was coming up the without a pilot, and with the design of anchoring or mooring in said river; that she was moving along rapidly, with the aid of wind and tide, carrying her fore and maintop sails; that from the improper and unskilful management of the persons navigating said ship, the anchors were not let go in due time to check her headway and bring

her round into the tide, nor were her sails properly and in season furled and clewed up so as to lessen her speed, but, on the contrary, the said ship was so improperly and unskilfully managed and navigated, in the particulars above mentioned, that she was driven upon and into the said steamboat as aforesaid.

Fifth. That the persons navigating the said ship let one anchor go about abreast, or in the neighborhood of, the slip or pier, which partially checked her headway, but, notwithstanding, she continued to drift up the stream with the tide, heading partly across it, and in the direction of the shore; that the second anchor not being shackled, or otherwise in readiness, as it should have been, was not cast off into the stream until the said ship had drifted up to about opposite street pier, and at a distance of three hundred feet or thereabouts from the said and before a sufficient scope of cable had run out or the two anchors had checked her headway, she ran into and afoul of the said the stern of the said ship striking with great force and violence against the starboard side of said steamboat, twenty-five feet from the bows, and cutting in the deck beams, fender piece, and plank shears, besides twisting round and damaging her stern; that at the time of the striking, the said ship was heading round into the stream and towards the shore, and that the collision aforesaid was occasioned by the negligence, inattention, and want of proper care and skill on the part of the said ship, her master and crew, and not from any fault, omission, or neglect on the part of the said her master and crew.

Sixth. That the said ship had not before, nor at the time of the collision, a proper lookout and watch to guard against the danger of a collision in a crowded port; that the crew of said ship were occupied on the forward part of the vessel while she was drifting up as above mentioned, after having let go the first anchor, in shackling or otherwise preparing the second anchor to be cast into the stream; that the collision would not have occurred if both of said anchors had been in readiness, or had been suffered to run in due season, which would have checked her headway, or if the position of

her yards had been changed by hauling on the port braces, which would have forced her off from the docks towards the middle of the stream; and that the master and crew of the fearful, from the course pursued by those navigating the ship, that she would run into and upon their vessel, did everything in their power, by getting out additional fasts to the wharf and heeling their vessel over, to diminish the extent of the injury and damage to be caused by the blow.

Seventh. That the said steamboat was so disabled and injured by the force and violence with which she was struck by the said ship as to render it necessary to take her to the dry dock for repairs at a time when her services on the line in which she was engaged were particularly valuable to her owners; and that the libellants, in consequence of the having been run into and foul of as aforesaid, have sustained damages for the hire and expenses of a steamboat to supply her place; for repairs to the said and to her fixtures, for her loss of time, for expenses of her master and crew, and otherwise, to the amount of dollars; which said damages were occasioned by the negligence, want of skill, and improper conduct of the persons navigating the said ship and not by or through any fault, negligence, or improper conduct on the part of the persons on board the her master or crew.

Eighth. That since the said was so run foul of and into as aforesaid, these libellants have applied to the firm of W. & X., the consignees of said ship, — the owners of said ship residing, as these libellants are informed and believe, in the town of and State of where said ship belongs, — and requested them to settle with these libellants for the damages sustained by them as above mentioned; but the said consignees deny that there is any liability on the part of said ship for the said damages, or any part thereof.

Ninth. That the said ship is now lying in the port of and within the jurisdiction of this court.

Tenth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 10.

**LIBEL IN A SUIT IN REM ON A BOTTOMRY BOND GIVEN
BY THE MASTER AGAINST THE SHIP, OR AGAINST THE
SHIP AND FREIGHT, OR AGAINST THE SHIP, FREIGHT,
AND CARGO.**

[Commence as in No. 1.]

First. That on or about the day of 18 while the said ship was in the on her voyage from to aforesaid, the said C. D. then being master of the said (ship), she encountered a severe gale whereby she sustained serious damage in her hull, sails, and rigging, and two days thereafter entered the harbor of aforesaid in a disabled state; that the said C. D., being under orders to take in a cargo at that port without delay, and to return therewith to aforesaid, it became and was his duty forthwith to repair and refit the said (ship), so as to enable him safely to undertake the execution of his aforesaid orders; that being in the want of the funds necessary for this purpose, amounting to the sum of dollars, and having no other means of procuring the same, he, the said C. D., master aforesaid, borrowed the aforesaid sum of the libellant on bottomry, at the rate of per centum premium on the voyage aforesaid, designed from to which said sum was by the libellant accordingly advanced to the said C. D. for the purpose aforesaid.

Second. That, in consideration of the said sum of money so advanced, he, the aforesaid C. D., by a certain bond or instrument of bottomry, bearing date at aforesaid, the day of 18 by him duly executed in the presence of two credible witnesses, who respectively subscribed their names thereto as witnesses to the due execution thereof, bound the said (ship), her boats, tackle, apparel, and furniture (*and, if the fact be so*, also the freight which should become due for the aforesaid voyage; *or* the freight, &c., and also the cargo on board the said ship), for the payment of the aforesaid sum of dollars, together with the aforesaid premium thereon, amounting in the whole to the

sum of dollars, at or before the expiration of five days after the safe arrival of said (ship) at her moorings in the harbor of a copy of which bond is hereunto annexed.

Third. That the said (ship) having, by means of the said loan, been fitted for sea, proceeded with a cargo on board (*if the cargo is hypothecated, it would be proper here to describe it as thus:* consisting of) to aforesaid, where she arrived in safety on or about the day of

18

Fourth. That the aforesaid sum of dollars has not, nor has any part thereof, been paid to the libellant, nor to any other person authorized to receive the same in his behalf, although the said C. D. has often been requested to pay the same.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]



FORM No. 11.

LIBEL FOR SALVAGE.

[*Commence as in No. 1.*]

First. That on the day of last past, the said C. D., being on a voyage in said ship from in the Island of to in discovered a barque dismasted and apparently deserted, whereupon he hauled up for and boarded her; that he found the said barque, which proved to be the British barque of with twelve feet of water in her hold, totally dismasted and entirely abandoned by her captain and crew; that he found no papers on board the said barque, but she had a full cargo of rum, sugar, and other West India produce on board.

Second. That the said C. D. thereupon took the said barque in tow and made for the port of where he arrived with the said barque on the twelfth day of

September instant, the crew of the said ship being almost worn out with fatigue in pumping out the said barque and other work done on board of her, and they are entitled to reasonable share of said ship and cargo for the salvage thereof.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 12.

LIBEL BY A PASSENGER FOR A VIOLATION OF CONTRACT.

[*Commence as in No. 1.*]

First. That the said ship at the several times herein after stated has been and is yet lying in this port bound on a distant voyage to and the said A. B. and C. D. were and are the sole owners of the said ship, her tackle, apparel, and furniture, and are about to sail in said ship on such voyage, and the said C. D. was and is the master of said ship, and that the said owners and master employed Y. Z. as their agent to obtain passengers for the said ship in such voyage, and otherwise to act for them as their agent in respect to the said ship.

Second. That the libellant and other persons having seen that the said ship was advertised to sail for and being desirous to go to that place with dispatch, they either in person or through their agents applied to the said Y. Z. for information in regard to the terms and accommodations of the said ship, and also as to the time of her sailing from this port, whereupon the said Y. Z., so acting as agent for the ship, then and there represented and stated to the said libellant, or his agents, that the said vessel was of the very best class and condition, and a fast sailer, and in order that the cabin passengers might have all the comfort desired and plenty of space for exercise and air, that the said owners engaged not to take more than fifty cabin passengers, and that the passage-money by reason thereof would be three hundred dollars a passenger,

instead of two hundred and fifty dollars, the usual charge for such a voyage; whereupon the name of the libellant or his agent was left and taken, and a refusal or option given to him to go in such vessel upon such terms. That shortly thereafter the libellant or his agent again called, whereupon the said Y. Z. represented to him that another party, called the "Morgan Party," had taken twenty-six berths (meaning, had engaged passage for twenty-six persons), and that there were other persons speaking for the remainder of the berths, and if the libellant and his friends desired passages, they must engage the same without delay.

Third. That the libellant or his agents, after seeing the said agent, examined the ship, found the said C. D., the captain and part-owner, went on board the said vessel with him, and thereupon the said captain and part-owner exhibited to the libellant or his agents parts of the vessel between the decks, where state-rooms and separate apartments for each two passengers were about to be hastily prepared, the vessel having a small cabin as a freighting vessel; and thereupon the said captain and part-owner represented and stated to the libellant or his agents that accommodation would be prepared for fifty passengers, and that the passengers should not be crowded; and he marked out and represented to the said libellant or his agents where the said state-rooms were to be, and the size of the same, and certain spaces which were to be left between the same for exercise and air, and represented that such state-rooms were to consist of a range of separate apartments on each side of the said vessel, each of which was to be at least six feet square, well lighted and ventilated, and between the same an open space or hall was to be left for ventilation and for promenade. That he also marked and showed the libellant or his agents how and where the bulk-head was to be built separating the cabin from the steerage, and that only fifty cabin passengers were to be taken, and that such passengers should have an equal and impartial chance of drawing for berths, which were also to be made so nearly equal in accommodations as to afford little, if any, choice, and that the said master and owners would not take freight to the inconvenience of the passengers, and that the

said vessel would sail on or about the fifth day of January, 18 and that in consequence of the pressure of passengers it was necessary for the libellant to engage his passage without delay.

Fourth. That relying upon such representations, and other like deceptive and unfair representations, this libellant proceeded to enter his name at three hundred dollars for a passage, it being thereupon represented to the libellant that he must actually pay his passage-money to insure his passage, that such was the custom, and that many others had paid; the libellant or his agents, shortly afterwards, and on or about the second day of January instant, paid to the said owners or their agent the sum of three hundred dollars as and for the passage-money in advance as a cabin passenger.

Fifth. That the libellant, being a resident of in this State, relying upon the representations aforesaid, prepared himself at much expense for such contemplated voyage; and, after being so prepared, was in attendance in this city at the time appointed for the departure of the said vessel, and has been subjected to inconvenience, expense, and risk of loss, besides the loss of his time by the delay of the said vessel; and since his arrival at port he has ascertained, and alleges to be the fact, that the said owners have broken their positive agreement with the libellant in various particulars; and that the representations aforesaid were deceptive, and calculated and intended to induce the libellant and others to pay or deposit their money as aforesaid, at a high price, and then to deprive them of the means of redress; relying upon the known anxiety of the said libellant and others to proceed without delay, to induce them to overlook the many variations from, and neglects of, the matter so represented to the libellant. That the said owners have made and fitted up in the ship aforesaid, between decks (calling it a cabin), a number of berths and pretended state-rooms, or separate divisions, greater than the number so represented, and have filled up therewith the entire centre part of said vessel, which was to have been left open, preventing ventilation, and rendering them close, confined, and unhealthy, and have engaged to take and transport in and on board of the said vessel as

cabin passengers, seventy-two persons, rendering it uncomfortable and unsafe for the libellant to proceed in such vessel upon the said voyage; and many of said passengers, and who are represented to have paid, or to have engaged, berths at three hundred dollars each, have been in part permitted to become passengers, paying or engaging to pay for such passages only two hundred and seventy-five dollars, which circumstance of itself has contributed to crowd the vessel, and is contrary to the engagement made with the libellant or his agent, and the said vessel has also been overcrowded with cargo, and the passengers greatly inconvenienced thereby.

Sixth. That the libellant or his agents, and various others of the said passengers, on discovery of the matter, have demanded a return of the said passage-money paid by them respectively, on failure to obtain a compliance with the representations and engagements aforesaid, but the same has been refused. That the libellant is unwilling to go in said vessel under such circumstances, and has sustained and will sustain damages, as he believes, beyond the amount of said passage-money, to the amount of one thousand dollars.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[Conclude as in No. 1.]

FORM NO. 13.

LIBEL *IN REM* FOR NEGLECT TO FURNISH PROVISIONS TO A PASSENGER.

[Commence as in No. 1.]

First. That in the month of in the year one thousand eight hundred and the said vessel, whereof the said C. D. was master, being in the port of destined on a voyage from thence to the port of the said libellants embarked on board of said vessel as passengers, and paid their freight from the said port of to the said port

of and the agreement under which the said libellants embarked as passengers on board the said vessel was in substance as follows: That in consideration of the sum of (thirty pounds sterling) paid, the said libellant and his family were to be provided with a steerage passage from to in the ship with not less than ten cubic feet for luggage for each adult, and that three quarts of water per day, during said voyage, should be furnished to each adult; and that there should be furnished to each of said libellants to be computed as adults, per week, during said voyage, seven pounds of bread, biscuit, flour, oatmeal or rice, or a proportionate quantity of potatoes (five pounds of potatoes being computed as equal to one pound of the other articles), one-half of the quantity to be biscuit, to be issued not less often than twice a week, two children under fourteen years of age, and over one year, being computed as one adult; and the libellants state that they are all statute adults, excepting the libellants D. E., E. G., and T. G., who are all over one year and under fourteen years of age.

Second. That the said voyage commenced about the day of 18 and continued for about days, when the said vessel arrived at said port of where she now is. That shortly after the sailing of the said vessel, he the said C. D., by himself or his agents, on the high seas, withheld from and refused to furnish to the said libellant and his family the said water and said provisions so as aforesaid by the said agreement to be furnished, whereby the said libellant and his family, during the said voyage or passage as aforesaid, suffered great want, hunger, and thirst, and starvation, to the great injury of the health and deprivation of the comfort of the libellant and his family, and the libellant claims dollars damages.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 14.

LIBEL IN A SUIT *IN REM* BY A MARINER FOR WAGES.

[Commence as in No. 1.]

First. That on or about the day of 18 the said ship or vessel whereof the said C. D. was master, being then in the port of and designed on a voyage upon waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit, from the said port of to and back to the said port of he the said C. D. did ship and hire the libellant to serve as a mariner on board the said ship for and during the said voyage, at the rate or wages of dollars per month ; and accordingly on or about the day of 18 the libellant entered on board and into the service of the said ship in the capacity and at the monthly wages aforesaid, and signed the usual shipping articles or mariner's contract, which, for greater certainty, he prays may be produced by the said C. D. to this honorable court.

Second. That the said ship having taken in a cargo of divers goods and merchandise, proceeded on her said voyage with the libellant on board, and arrived at the said port of on or about the day of 18 with the said cargo on board, which she delivered or otherwise disposed of, and then proceeded on her homeward-bound voyage to the said port of where she arrived on or about the day of 18 with the libellant on board, and was there safely moored ; and the said C. D. discharged the libellant from the service of the said ship, without paying him the wages due to him for the said voyage (*or, if a part has been paid, then say, except the sum of*), though often requested to pay the same.

Third. That during all the aforesaid voyage the libellant well and truly performed his duty on board the said ship in the capacity aforesaid, and was obedient to all the lawful commands of the said master and other officers on board the said ship, and well and truly deserved the wages of dollars per month as schedulate.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable court.

[*Conclude as in No. 1.*]

[*Schedule to which the Foregoing Libel refers.*]

Wages from the	day of	18	to the	day	
of	18	months and	days at		
dollars per month	.	.	.	.	\$
Deduct	.	.	.	.	\$

NOTE. — (*If the libel is filed without a preliminary summons, the following allegation may be inserted, to wit:*) That the said ship has left the port of delivery where the said voyage ended, without paying to the libellant the balance of wages due to him as aforesaid (*or this, if it be true*), that the said ship is about to proceed to sea before the end of ten days next after the delivery of her cargo or ballast.



FORM No. 15.

LIBEL IN REM BY A SEAMAN ON A WHALING CONTRACT FOR HIS SHARE OF THE VOYAGE.

[*Commence as in No. 1.*]

First. That some time in the month of one thousand eight hundred and the said ship then lying in the port of and destined on a three years' whaling voyage to the northwest coast, the then master, C. D., by himself or his agent, hired this libellant as a hand on board the said ship for the voyage aforesaid, on the two hundred and twenty-fifth lay or share of what should be taken, as wages; and this libellant signed the shipping articles, wherein the contract is fully set forth, and which he prays may be produced by the said master, as this honorable court shall direct.

Second. That the said ship went to the northwest coast, and cruised thereabouts until the month of one thou-

said eight hundred and when she started for home,
and proceeded directly to the port of where she arrived
on or about the day of 18 and has since come
to this port, where she now is.

Third. That during the said voyage the said ship took in a cargo of oil and bone of great value, being, as the libellant is informed and believes, four thousand and seven hundred barrels of right whale, between forty and fifty barrels of sperm, and forty-seven thousand pounds of bone; and the libellant claims to be entitled to demand and have of and from the said ship, her master and owners, his share or lay of the said cargo, being the two hundred and twenty-fifth part thereof, worth, as this libellant verily believes, the sum of dollars and upwards, which the master and owners of the said ship have hitherto refused, and still refuse to pay, to the great damage of the libellant.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 16.

LIBEL *IN REM* BY A SEAMAN TO RECOVER EXPENSES
FOR SICKNESS CONTRACTED IN SERVICE OF THE SHIP.

[*Commence as in No. 1.*]

First. [*Here insert the first article of No. 15.*]

Second. That as the said ship was going out of the harbor at on or about the day of 18 the libellant being engaged in the service of said vessel, while doing his duty and obeying the commands of the master, fell from the maintopsail yard, and was so severely injured that he was taken ashore to the hospital, where he remained confined to his bed for the space of twenty-one months, or thereabouts.

Third. That by reason of the injuries so received in the service of the said vessel, as above stated, the libellant has

lost the use of one of his legs, and one of his arms is rendered almost useless, and by reason thereof he has been put to great expense already for medical advice, and before he can be restored must undergo an operation involving further expense to a large amount, and he claims to be entitled to demand and have of the said ship his reasonable expenses already incurred, and hereafter to be incurred in and about his cure, and his reasonable support since his said injury, and till he shall be cured.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 17.

LIBEL *IN REM* FOR SHORT ALLOWANCE OF BREAD.

[*Commence as in No. 1.*]

First. [*Here insert the first article in No. 15.*]

Second. That during the voyage from to and for about one month and a half, the libellant was on short allowance of good wholesome ship-bread, the bread which was furnished to the libellant being mouldy, rotten, and wormy, and unfit to be eaten; and that during all the voyage from the port of to and from thence until the return of the vessel to this port, and for the period of about six months and a half, he was on short allowance of good and wholesome ship-bread (the bread that was furnished to the libellant being of the same description as that furnished for their use on the passage to), the said master having neglected to put on board the requisite quantity of provisions for the said voyage, according to the act of Congress in such case made and provided.

Third. That during the whole time that libellant was on board the said vessel he well and faithfully performed his duty as such seaman as aforesaid, and was obedient to all

lawful commands of the said master and the other officers of the vessel, whereby and by reason of being put on such short allowance as aforesaid he became entitled to demand from the said vessel the sum of dollars.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and this honorable court.

[*Conclude as in No. 1.*]

—♦—
FORM NO. 18.

LIBEL IN A SUIT *IN REM*, BY A SHIP-OWNER AGAINST THE CARGO OR GOODS TRANSPORTED, FOR THE FREIGHT THEREOF.

A. B., of exhibits this his libel against (*here describe the goods proceeded against, as, for example, twenty tons of Liverpool coal, or bar iron, or five boxes of figured muslins, or silks*) lately laden on board the ship whereof C. D. now is or lately was master; which said (coal, iron, muslin, or silks, or *as the case may be*) are now in the hands of I. J. (*or in the custody of the said master, or of the libellant, as the case may be*) at in the district aforesaid, and within the admiralty and maritime jurisdiction of this honorable court; and against all persons lawfully intervening for their interest therein in a case of contract, civil and maritime; and thereupon the said A. B. alleges and articulately propounds as follows, to wit: —

First. That on or about the day of 18 the said ship whereof the said C. D. was master, and the libellant was and still is the owner (*or charterer*), being at the port of in the kingdom of and bound to the said master, at the request of G. H., of the city of merchant, agreed to receive and take on board the said ship the aforesaid and convey the same to aforesaid, and there deliver the same in like good order in which the said were received on board to E. F., merchant

there residing; the said E. F. paying the usual and customary freight thereon (*or if the sum to be paid was agreed upon at the time of the shipment*, he the said E. F. paying as and for the freight thereon the sum of), the dangers of the seas excepted; for which said the said master gave to the said G. H. a bill of lading.

Second. That afterwards, to wit, on or about the said day of 18 at the port of aforesaid, the said C. D., master as aforesaid, in pursuance of the said agreement, did receive and take on board the said ship the aforesaid, and immediately (*or soon*) thereafter did set sail and proceed to aforesaid, where he arrived with the said in good order, on board, on the day of 18 and immediately gave notice to the said I. J. of the arrival of the said ship, and of the aforesaid so laden on board thereof, and offered to deliver the said to the said I. J. upon the payment of the freight due thereon according to the aforesaid agreement.

Third. That afterwards, to wit, on the day of 18 the said freight not having in the meantime been paid or secured (*or, that afterwards, to wit, on, &c., the said I. J. having declined, or having refused, to pay the said freight until the said had been landed, and an opportunity thereby afforded to inspect the same, for the purpose of ascertaining whether any damage had been done thereto during the voyage*), he, the said C. D., master as aforesaid, proceeded to unload the said and to the end that the lien or privilege of the libellant thereupon might not be lost, the said master deposited the same in the hands of the aforesaid I. J., to be by him retained until the aforesaid freight should be paid or secured, and who still retains the same in his custody (*or, if the fact be so, then say, and, to the end, &c., the said master retained, and still retains, the same in his custody; or, to the end, &c., the libellant took the same into his custody, and still retains the same*).

Fourth. That the usual and customary freight for the conveyance of (*here specify goods on account of which freight is claimed*) from to at the time of the making of the aforesaid agreement. (*If the sum to be paid for freight was*

specifically agreed upon, this article ought to be omitted, and the stipulated sum stated.)

Fifth. That the said E. F., the consignee as aforesaid of the said hath not paid to the libellant the said freight, nor any part thereof, though often requested to do so, but, on the contrary, utterly neglects and refuses to pay the same.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 19.

LIBEL IN A SUIT *IN REM*, ON A CHARTER-PARTY, BY THE OWNER, AGAINST THE CARGO, FOR THE STIPULATED FREIGHT OR HIRE OF THE SHIP.

[*Commence as in No. 1.*]

First. That on the day of 18 at the libellant, being the owner of said ship by a certain charter-party of affreightment (a copy whereof is hereto annexed) then and there made and concluded between him, the libellant, of the one part, and G. H., of of the other part, did let to freight the aforesaid ship, whereof the said C. D. was then master, with her appurtenances, for a voyage on the high seas, and on waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit, from the port of to and back again to the aforesaid port of

Second. That the libellant, in and by the said charter-party, and for the consideration thereafter mentioned, covenanted and agreed with the said G. H., that the aforesaid ship, in and during the voyage aforesaid, should be tight, stanch, and strong, and sufficiently tackled and apparelled with all things necessary for such a voyage; and that it should be lawful for the said G. H., his agents or factors, as well at the port of aforesaid as at aforesaid, to load and put on board the said ship loading of such goods and

merchandise as they should think proper, contraband goods excepted.

Third. That, in consideration of the premises in the said charter-party expressed and hereinbefore stated, the said G. H. thereby agreed to pay to the libellant for the freight and hire of the said ship and appurtenances the sum of dollars per month, and so in proportion for a less time, so long as the said ship should be continued in the aforesaid service, in days after her return to the said port of (or in days after the said voyage shall be otherwise in any manner whatsoever determined, and notice thereof given to the libellant). And the said G. H., in and by the said charter-party, further agreed to pay the charges of victualling and manning the said ship, and all port charges and pilotage during the aforesaid voyage, and to deliver the said ship on her return to the libellant or his order. All which by the said charter-party, a copy whereof is hereunto annexed, reference being thereunto had, will fully appear.

Fourth. That afterwards, to wit, on the day of 18 the said vessel being then and there tight, stanch, strong, and every way properly fitted and manned for the voyage, in the aforesaid charter-party mentioned, the said C. D., master as aforesaid, did then and there, at the instance of the said G. H., receive and take on board said ship a full cargo of lawful goods, and immediately thereafter set sail and proceeded to aforesaid, where, on his arrival, he duly delivered the whole of the said cargo to the agents or consignees of the said G. H.

Fifth. That afterwards, to wit, on the day of 18 at aforesaid, the said C. D., master as aforesaid, at the instance of the said G. H. or his agent, took on board the said ship another full cargo of lawful goods consisting of hereinbefore mentioned, and immediately thereafter set sail and proceeded thence to the aforesaid port of where he arrived on the day of 18 and immediately gave notice of the arrival of the said ship and cargo to the said G. H., and then proceeded to unload the said cargo; and for the purpose of preserving and maintaining the lien or privilege of the libellant therefor, the said

master deposited the same in the hands of the aforesaid I. J., to be by him retained until the aforesaid freight or hire should be paid or secured, and who still retains the same in his custody (*or, if the fact be so, then say: for the purpose, &c., the said master retained and still retains the custody of the same; or, for the purpose, &c., the libellant took the same into his custody, and still retains the same*).

Sixth. That the libellant has always, since making the aforesaid charter-party, well and truly performed and kept all and singular the covenants and undertakings by the said charter-party required to be performed and kept on his part; and has, at all times since the arrival of said ship at the port of aforesaid, been ready, and still is ready, to deliver the said cargo or cause the same to be delivered to the said G. H. on his paying or securing the aforesaid freight or hire of the said ship.

Seventh. That the said G. H. has not paid to the libellant the aforesaid freight or hire, nor any part thereof, although often requested to do so, but, on the contrary, utterly neglects and refuses to pay the same.

Eighth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]



FORM No. 20.

LIBEL IN REM AGAINST THE SHIP AND FREIGHT FOR MONEYS ADVANCED TO PAY REPAIRS.

[*Commence as in No. 1.*]

First. That the said ship of the burthen of tons or thereabouts, is now owned, or was at the time hereinafter mentioned owned, by some persons resident out of the State of who are to the libellant unknown, but one of whom, he is informed and believes, resides in the State of and the others in the State of and that the said ship belongs to the port of in the said State of

Second. That the said ship, some time in the early part of last, sailed from the said port of bound to the said port of under the command of the said C. D., as master. And that in the course of the said voyage, and some time on or about the day of last, the said ship got on shore on the and suffered great damage. That the said ship was subsequently got off and carried into where it was found that it was necessary that she should undergo a course of thorough and expensive repairs, and be furnished with certain supplies in order to render her seaworthy and fit to go to sea.

Third. That the said C. D., master as aforesaid, accordingly went on and repaired said ship, and purchased said supplies, and that the expenses of such repairs and supplies necessarily amounted to about dollars. That the said master not having the funds to pay for the said repairs and supplies, applied to this libellant at aforesaid, for a loan of part of the amount necessary for that purpose. And this libellant accordingly advanced to the said C. D., for the use of the said ship, and on her credit and that of her said master and owners, on the day of last, the sum of dollars, to be repaid to this libellant on the arrival of the said ship at (to which port she was destined from aforesaid), and that the sum of dollars was applied by the said C. D. towards payment of the said repairs and supplies.

Fourth. That shortly after making the said advance by this libellant, the said ship sailed from for the port of where she arrived some two or three days since. That after her arrival at the said port of this libellant applied to the said C. D., master as aforesaid, for repayment of the said amount so advanced by him as aforesaid, which the said master declined, on the ground that he was utterly unable so to do. And that the said ship has now been taken possession of by one of her said owners, who refuses to recognize the said debt, or make any provision therefor, to the damage of this libellant in the full sum of dollars.

Fifth. That the said ship on her voyage from to brought a cargo on freight, the whole or greater part of

which is now on board of the said ship, and the freight whereof is still uncollected.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 1.*]

FORM No. 21.

LIBEL IN PERSONAM. GENERAL FORM.

DISTRICT COURT OF THE UNITED STATES, } *In Admiralty.*
District of

To the Honorable Judge of the District Court of the
 United States in and for the District of

The libel of A. B., of the city of merchant, against
 C. D., now or lately master of the (or, against L. M.,
 owner of the whereof C. D. now is or lately was mas-
 ter; or, as the case may be, in a cause of contract, civil and
 maritime; or, in a cause of subtraction of wages, civil and mari-
 time; or, in a cause of pilotage, civil and maritime; or, in a
 cause of wharfage, civil and maritime; or, in a cause of colli-
 sion, civil and maritime; or, in a cause of damage, civil and
 maritime).

And thereupon the said A. B. doth allege and articulately
 propound as follows, to wit:—

First. That (*set forth the first statement of the libel, and
 follow with the others, in distinct articles, numerically arranged.*
The last to be as follows:)

Sixth. That all and singular the premises are true, and
 within the admiralty and maritime jurisdiction of the United
 States and of this honorable court.

Wherefore the libellant prays that process of monition may
 issue to the marshal of the district aforesaid, commanding
 him to cite and admonish the said C. D. (or L. M.) to ap-
 pear before this honorable court on the day of
 18 or on such other day, to be inserted in the said
 monition, as the court shall direct, then and there to answer

the libellant in the premises, according to the course of courts of admiralty, and the rules and practice of this honorable court in civil causes of admiralty and maritime jurisdiction; and that this honorable court will pronounce for the libellant's aforesaid demand against the said C. D. (*or L. M.*), and decree the same to be paid with costs, and for such other and further relief and redress as to right and justice appertain, and as the court is competent to give in the premises (*and if a prayer to such effect is deemed expedient, then add :*) and further, that the said C. D. (*or L. M.*) may be required to answer the interrogatories hereto subjoined.

A. B., *Libellant.*

— —, *Proctor.*

On the day of 18 appeared personally A. B., the above-named libellant, and was sworn to the truth of the foregoing libel. Before me,

— —, *Clerk (or Commissioner).*

(*Where a warrant of arrest is required insert :*)

Wherefore the libellant prays that a warrant in due form of law may issue to the marshal of the district aforesaid, commanding him to arrest the said C. D. (*or L. M.*), and to have him forthcoming before this honorable court on the day of 18 or on such other day, to be inserted in the said warrant, as the court shall direct, then and there to answer the libellant in the premises.

(*Where a clause of attachment against the goods and chattels, credits and effects, of the defendant is desired, insert :*) And further commanding the aforesaid marshal, if the said C. D. (*or L. M.*) shall not be found within the district aforesaid, to attach the goods and chattels, and for want thereof the credits and effects, of the said C. D. (*or L. M.*) in the hands of E. F., of merchant.

FORM No. 22.

LIBEL *IN PERSONAM* BY A SHIP-CHANDLER AGAINST
THE OWNER FOR SUPPLIES.

[Commence as in No. 21.]

First. That in the month of one thousand eight hundred and said ship being then owned by the said E. F., and lying in the port of under the command of one C. D., and standing in need of provisions and stores the libellant, at the request of the said master, furnished to and for the use of the said ship the provisions and stores contained in the schedule hereto annexed, amounting to the sum of dollars, and that the same were furnished at the prices in said schedule stated.

Second. That the said stores were necessary to enable the said ship to perform her intended voyage or voyages, and were furnished on the credit of the said ship, as well as of the master and owner thereof.

Third. That the said owner has been requested to pay the said bill, but has hitherto wholly neglected and refused to pay the same, and the sum of dollars, including interest, is now justly due and owing to the libellant for the same.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[Conclude as in No. 21.]

FORM No. 23.

LIBEL *IN PERSONAM* AGAINST THE OWNERS FOR SUPPLIES ORDERED BY THE MASTER IN A FOREIGN PORT.

[Commence as in No. 21.]

First. That at various times during the year eighteen hundred and the said ship then under the command of C. D., and owned by the said E. F. and G. H., was lying

at aforesaid, and standing in need of stores, provisions, and other necessities, to enable her to perform her intended voyage or voyages, and the libellant, at the request of the said master of the said ship, did furnish to and for the use of the said ship, provisions, stores, and other necessities, to enable the said ship to perform her intended voyage or voyages, to the amount of dollars, which said bill is hereunto annexed, signed and approved by the said master; and the said provisions, stores, and other necessities were furnished on the credit of the said ship, and the master and owners thereof.

Second. That the libellant has repeatedly requested the said master and the said owners to pay him the said sum of money so due to the libellant for the provisions, stores, and other necessities so furnished as aforesaid, but that the said master and owners have hitherto neglected and refused to pay the same, and still neglect and refuse so to do. And that the sum of dollars, with the interest, is still due to the libellant over and above all payments and deductions.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

FORM No. 24.

LIBEL IN A SUIT *IN PERSONAM* BY A MARINER FOR
WAGES, AGAINST THE MASTER OR OWNER.

[*Commence as in No. 21.*]

First. That on or about the day of 18 the said ship or vessel whereof the said C. D. was then master (*or, if the suit be against the owner, then add: and the said E. F. was then owner*), being then in the port of and designed on a voyage upon the high seas, and on waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit, from the said port of to and back to the said port of he, the said C. D., master as aforesaid, did ship and

hire (*or, if the suit be against the owner*, he, the said E. F., owner as aforesaid, did, by himself or his agent, ship and hire) the libellant to serve as a mariner on board the said ship for and during the said voyage, at the rate or wages of dollars per month ; and accordingly, on or about the day of 18 the libellant entered on board and into the service of the said ship in the capacity and at the monthly wages aforesaid, and signed the usual shipping articles or mariner's contract, which, for greater certainty, he prays may be produced by the said C. D. to this honorable court.

Second. That the said ship, having taken in a cargo of divers goods and merchandise, proceeded on her said voyage with the libellant on board, and arrived at the said port of on or about the day of 18 with the said cargo on board, which she delivered, or otherwise disposed of, and then proceeded on her homeward-bound voyage to the said port of where she arrived on or about the day of 18 with the libellant on board, and was there safely moored ; and the said C. D. discharged the said libellant from the service of the said ship without paying him the wages due to him for the said voyage (*or if a part has been paid, then say, except the sum of*), though often applied to and requested to pay the same.

Third. That during all the aforesaid voyage the libellant well and truly performed his duty on board the said ship in the capacity aforesaid, and was obedient to all the lawful commands of the said master and the other officers on board the said ship, and well and truly deserved the wages of dollars per month as schedulate.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

FORM No. 25.

LIBEL IN PERSONAM AGAINST AN OWNER FOR THE TWO MONTHS' EXTRA PAY, PAYABLE TO THE CONSUL ON DISCHARGE.

[Commence as in No. 21.]

First. (*Here insert the first article in No. 14.*)

Second. That the said ship, having taken on board a cargo, proceeded therewith, and with the libellant on board, for the port of where she safely arrived and delivered her cargo, and made freight. That having taken on board another cargo of divers goods and merchandise, she proceeded therewith, and with the libellant on board, for the port of

That the said ship leaked badly soon after leaving the said port of whereupon the said master put into where the said vessel was sold, and the libellant was discharged from the said ship by the said master, and he proceeded thence to where he entered as a passenger, without wages, on board the ship bound for where he arrived on the second day of instant.

Third. That the said ship was an American vessel in the merchant service, and owned by a citizen or citizens of the United States, and that the libellant was described in the crew list of said ship as an American seaman.

Fourth. That at the time the libellant was discharged from the said ship the said master did not pay into the hands of the libellant, nor into the hands of the American consul at the said port, nor into the hands of any other person for the use of the libellant, the three months' extra pay, by the act of Congress in such case made and provided, directed to be paid to a seaman in an American vessel on his discharge in a foreign port.

Fifth. That the libellant is entitled to demand from the owner of the said ship such two months' extra pay, to wit, the sum of dollars.

Sixth. That all and singular the premises are true, and

within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

FORM No. 26.

**LIBEL BY A SEAMAN, IN A CAUSE OF DAMAGE, AGAINST
A MASTER, FOR ASSAULT AND BEATING, OR IMPRISONMENT.**

[*Commence as in No. 21.*]

First. That on or about the day of 18 at
the port of the said ship whereof the said C. D.
was master, then being at the port of and destined on
a voyage on waters within the admiralty and maritime jurisdiction of the United States and of this honorable court, to wit, from the said port of to and thence back to the said port of the libellant shipped to serve as a mariner on board the said ship during the said voyage; that the said ship soon thereafter proceeded upon the said voyage, with the libellant on board, and in due time completed the same; and that during the whole of the said voyage the libellant did well and truly perform his duty on board the said ship as such mariner, and was obedient to all the lawful commands of the said master and other officers on board the said ship.

Second. That during the said voyage, to wit, on or about the day of the libellant having the day before been accidentally hit by the jib-sheet block on his right arm, which became thereby so severely hurt and lamed as almost wholly to deprive him of the use thereof, insomuch that he could not move his said arm at all without excruciating pain, the said C. D. well knowing that the libellant had received the aforesaid injury, and had thereby become so disabled as aforesaid, ordered the libellant to go aloft and assist in shortening sail; when the libellant respectfully told the said C. D. that it was impossible for him to obey the said order; whereupon the said C. D. immediately knocked the libellant down by a violent blow, with his clenched fist, upon the head of the libellant, and, with great force and violence, kicked him

several times, and once upon his arm, while he lay upon the deck, whereby he was greatly hurt and bruised.

Third. That he afterwards, during the said voyage, to wit, on or about the day of (*Here allege any other assault and beating, or any imprisonment, which may have been inflicted by the defendant upon the libellant, and of which he sees fit to complain; and if more than two injuries of this nature have been so inflicted, they may also severally be alleged in separate successive articles.*)

Fourth. That by reason of the cruelty and unlawful violence to which the libellant has been subjected by the said C. D., as hereinbefore alleged and set forth, the libellant hath suffered great pain and distress (*and if the fact be so, then add: and his health was thereby greatly impaired, or, was and still is thereby greatly impaired*), and he hath been damaged to the amount of dollars.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

FORM No. 27.

**LIBEL IN PERSONAM BY A FEMALE PASSENGER AGAINST
THE MASTER OF A VESSEL FOR INSULT AND IN-
DECENCY.**

[*Commence as in No. 21.*]

First. That on or about the day of one thousand eight hundred and this libellant being in the port of in the and wishing to embark for the made application to the said C. D., then commanding the ship then lying in said port, for a cabin passage to the port of and thereupon engaged such passage, paying therefor the sum of for a cabin passage for herself and child, that being the highest price for the first class of passengers.

Second. That the said C. D. told this libellant, at the time of engaging such passage, that he was a married man, that

one of his sons was to accompany him on the voyage, and that this libellant should receive from him every fatherly care, attention, and protection, and should be under his especial charge.

Third. That the said ship left said port of on or about the day of and on the morning of day of 18 while this libellant was asleep in the state-room allotted to her (there being no key to the door of the same), said captain, C. D., entered said state-room, awoke this libellant out of her sleep, and made indecent and insulting proposals to this libellant, and upon this libellant ordering said C. D. out of her said room, said C. D. threatened that if this libellant revealed to the other passengers what had passed he would denounce her as a whore, and used other indecent and vulgar expressions to her. That this libellant afterwards, and in the course of about three hours after such occurrence, requested said C. D. to provide a key for said state-room door, which he refused to do.

Fourth. That for several days in succession after the last-mentioned occurrence, said C. D. was in the habit of coming into said libellant's state-room, awakening her out of her sleep, attempting violence to her person, and using indecent and vulgar expressions, and exposing his person in a disgusting manner; that upon this, libellant ordered said C. D. from her presence and room, and threatened to inform the other cabin passengers of his conduct towards her. Said C. D. shortly afterwards, and in the hearing of the other cabin passengers, ordered this libellant to remain in her room, and not leave the same, for if the libellant attempted so to do he would send her amongst the steerage passengers. That this libellant was closely confined to her said state-room for the space of two weeks, having her meals sent to her by said C. D.'s orders. That said C. D. was also in the habit of falsely and maliciously slandering this libellant to other of the said passengers on board such ship during such voyage.

Fifth. That this libellant was much injured in health, fretted and annoyed in body and mind, in consequence of such confinement and conduct of said C. D., and was quite

sick for some time after her arrival in said and is damaged in the sum of dollars.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]



FORM No. 28.

LIBEL IN PERSONAM AGAINST CONSIGNEE FOR FREIGHT ON A BILL OF LADING.

[*Commence as in No. 21.*]

First. That this libellant was at the times hereinafter mentioned, and still is, the owner of the ship and that C. D. was then the master thereof.

Second. That some time in the month of last, the said ship, then lying in the port of and destined on a voyage thence to the port of E. F. shipped on board the said vessel twenty hogsheads, weight and contents unknown, to be therein carried from the said port of to the port of and there to be delivered, the dangers of the seas only to be excepted, in like good order as they were received, to the defendant, Y. Z., or to his assigns, he or they paying freight for the same at the rate of per hogshead, without primage and average accustomed. And, accordingly, the said master, at the port of on the day of one thousand eight hundred and affirmed to the usual bills of lading, and delivered the same to the shipper of said cargo, a copy of which bills of lading is hereto annexed, marked "Schedule A."

Third. That in the same month said E. F. also shipped on board the said ship, on deck, for the same voyage, eighty hogsheads, weight and contents unknown, and seventy-nine casks, measurement and contents unknown, to be likewise delivered at the port of to the respondent or to his assigns, he or they paying freight for the same at the rate of for each hogshead, and for each forty gallons

gross custom-house gauge of the casks, delivered in without primage and average accustomed. And the said master, on the day of signed the usual bills of lading, and delivered the same to the shipper, a copy of which is also hereto annexed, marked "Schedule B."

Fourth. That soon after the said ship, with the said cargo on board, set sail from for and there in due time safely arrived, and the said hogsheads and casks were duly delivered to the said Y. Z., and were by him accepted and received.

Fifth. That by reason of the premises, the said Y. Z. became bound to pay to this libellant the freight for the said merchandise, which amounted in the whole to the sum of dollars, as is more particularly set forth in the account hereto annexed marked "Schedule C."

Sixth. That the said Y. Z., notwithstanding he has accepted and received the said merchandise, and that in like good order and condition as it was shipped, has refused to pay the freight for the same, although often thereto requested; and there is now due to the libellant for the freight on said merchandise the sum of dollars with interest.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

SCHEDULE A.

[*Here insert Bill of Lading.*]

SCHEDULE B.

[*Here insert Bill of Lading.*]

SCHEDULE C.

Marked			
Hope (1-20), 20 hhds.	. . . . .	@ \$4	\$80.00
Y. Z. (1-80), 80 hhds.	. . . . .	@ \$5	400.00
Y. Z. (1-79), 79 casks (11,000 galls. gross gauge)			
per 40 galls.	. . . . .	@ \$1	275.00
			<u>\$755.00</u>

FORM No. 29.

LIBEL IN PERSONAM ON A CHARTER-PARTY AGAINST
THE CHARTERER FOR CHARTER-MONEY.

[Commence as in No. 21.]

First. That some time in the month of one thousand eight hundred and the said ship being then in the port of the said libellant made and concluded with the respondent a charter-party (a copy of which is hereto annexed, and to which the libellant craves leave to refer), bearing date the tenth day of in the year aforesaid, by which the libellant for and in consideration of the covenants and agreements thereafter mentioned, to be kept and performed by the said respondent, did covenant and agree on the freighting and chartering of the said ship unto the said respondent for a voyage from the port of to and back to on the terms in the said charter-party mentioned, that is to say: —

1st. The said libellant engaged that the said ship, in and during the said voyage, should be kept tight, stanch, well-fitted, tackled, and provided with every requisite, and with men and provisions for such a voyage.

2d. The said libellant engaged that the whole of said ship (with the exception of the cabin, and the necessary room for the accommodation of the crew and the stowage of the sails, cables, and provisions) should be at the sole use and disposal of the said respondent during the voyage aforesaid, and that no goods or merchandise whatever should be laden on board otherwise than for the respondent or his agent, without his consent, on pain of forfeiture of the amount of freight agreed upon.

3d. The libellant further engaged to take and receive on board the said ship during the aforesaid voyage all such lawful goods and merchandise as the said respondent or his agent might think proper to ship.

Second. That among other things it was by the said charter-party covenanted and agreed that the said respondent,

for and in consideration of the covenants and agreements to be kept and performed by the said libellant, chartered and hired the said ship on the terms following, therein mentioned, that is to say : —

1st. The said respondent engaged to provide and furnish to the said ship the necessary cargoes or ballast for her lading at the several ports aforesaid.

2d. The said respondent further engaged to pay the said libellant or his agent, for the charter or freight of the said ship during the voyage aforesaid, in the manner therein following, that is to say : —

dollars per calendar month for each and every month, and *pro rata* for any unexpired month that said vessel might be employed, payable in current money of the United States, also to pay all the ships foreign port charges, lighterage, and pilotage.

The master to have what money he might require in foreign ports for disbursements, and the balance payable on discharge of the cargo in

Third. And the libellant further alleges and propounds, that afterwards, to wit, on the day of in the year aforesaid, at the said port of the said ship being then and there tight, stanch, well-fitted, tackled, and provided with every requisite, and with men and provisions necessary for such a voyage as in said charter-party mentioned, the said libellant, and C. D., master of the ship aforesaid, loaded and received on board of the said ship a full cargo of lawful goods, with which the said master immediately set sail and proceeded to the port of aforesaid, where being afterwards, to wit, on the third day of in the year aforesaid, arrived, the said master then and there made a delivery of such part of said cargo as was destined for aforesaid, to the agents or consignees of the said respondent.

Fourth. That the said master afterwards, to wit, on the day of in the year aforesaid, set sail and proceeded from the said port of to the port of aforesaid, where being afterwards arrived, to wit, the sixteenth day of in the year aforesaid, the said master then and there made a delivery of such part of said cargo as was des-

tined to aforesaid, and also took, loaded, and received on board of said ship five hundred bags of coffee, to be conveyed to

Fifth. That the said master, afterwards, to wit, on the day of in the year aforesaid, set sail and proceeded from the port of aforesaid, to the port of aforesaid, where being afterwards, to wit, on the day of in the year aforesaid, arrived, the said master then and there made a delivery of the articles and residue of the said outward cargo, and afterwards, to wit, on the sixth day of in the year aforesaid, at aforesaid, took on board the said ship a further cargo of lawful goods, with which the said master set sail and proceeded to the port of aforesaid, where he afterwards, to wit, on the day of one thousand eight hundred and arrived, and delivered said homeward cargo to the said respondent or his agents at said port.

Sixth. That the libellant has always, since the making of the said charter-party, well and truly performed and kept all and singular the covenants and undertakings on his part, according to the said charter-party to be performed and kept, but the said respondent has not well and truly performed and kept all and singular the covenants and undertakings on his part, according to the said charter-party, to be performed and kept as is hereinafter more particularly propounded.

Seventh. That on the discharge of the said homeward cargo at the port of aforesaid, the sum of dollars and upwards, for freight, foreign port charges, lighterage, and pilotage (after deducting dollars received by said master in foreign ports for disbursements), became and was due and payable from the said respondent to the libellant, according to the said charter-party and the agreement of the said respondent, as is alleged in the second article of this libel.

Eighth. That the said respondent has paid to the libellant the sum of dollars on account of the said charter and no more, and has not paid a balance of dollars due thereon, from the respondent to the libellant, on the discharge of the said cargo at the said port of although often requested thereto, and now utterly neglects and refuses so to

do, to the damage of the said libellant, the full sum of dollars and upwards.

Ninth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

FORM No. 30.

**LIBEL BY THE OWNER OF A VESSEL, *IN PERSONAM*,
AGAINST THE CONSIGNEE OF THE CARGO, FOR UN-
REASONABLY DETAINING THE VESSEL.**

[*Commence as in No. 21.*]

First. That in the month of last, the said ship lying at and destined on a voyage to E. F. shipped on board the said ship one hundred and ninety-four tons of coal, or thereabouts, to be therein carried from to and there delivered in like good order and condition (the dangers of the sea only excepted), to Y. Z. or his assigns, to whom the same belonged, he or they paying freight for the same at the rate of ninety cents per ton; and accordingly the master of said ship, at on the day of last, signed the usual bills of lading, a copy of which is hereto annexed.

Second. That shortly after, the said ship set sail for bound to with the said coal on board, and there safely arrived on or about the day of and on the next day, C. D., the master of said vessel, caused a written notice to be served upon Y. Z., the consignee, and owner of the coal, as follows:—

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SIR, — You will please to take notice, that the ship under my command, and loaded with coal consigned to you, was ready to discharge cargo this morning, of which fact you have been duly notified. And you will further take notice that demurrage will be demanded for every day she is detained.

To Y. Z., Esq.

C. D.

Third. That the said Y. Z. accepted the said cargo, and commenced to receive the said coal, but refused to take it

save in very small quantities, and at irregular times, capriciously and vexatiously, and when urged and requested to take the same more expeditiously, replied that he would take it when it suited him, and no faster, and would keep the ship as long as he wanted to, for the captain could not help himself, and in accordance with such threat he detained the said ship until the day of instant, on which day fifty tons of coal were still on board, and were taken out by him and his agents, and the ship completely discharged.

Fourth. That during the whole time the said ship was so detained, she was obliged to lie at the foot of street in the that being the place designated by the bill of lading, in danger of being frozen up and compelled to winter here, and her whole crew were detained, at the expense of the vessel, and two extra men and a horse were kept constantly waiting on the dock during very severe and cold weather, ready to deliver the coal whenever the said Y. Z. should take it away. And the said Y. Z. was often notified by the master of the said ship, that the said master was constantly ready to deliver said coal, and that the expense and damage of such detention would be demanded of him.

Fifth. That the usual and sufficient time to discharge such a cargo of coal is four days, and this libellant claims to be entitled to have of the said Y. Z. the damages sustained by him by reason of the unjust detention of said vessel beyond that time, which he alleges amounts to the sum of dollars and upwards.

Sixth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]

FORM No. 31.

LIBEL BY A SHIP'S HUSBAND AGAINST THE CHARTERERS,
FOR DEMURRAGE.

[Commence as in No. 21.]

First. That some time in the month of in the year one thousand eight hundred and the said ship then being in the port of the said libellant made and concluded with the respondent a charter-party, a copy of which is hereto annexed, bearing date the day of aforesaid, by which the libellant, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the said respondent, did covenant and agree on the freighting and chartering of the said bark unto the said respondent for a voyage from to or — one only — and from the port of discharge, to proceed to and load back for for the charter-money and on the terms and conditions mentioned in the said charter-party.

Second. That, among other things, it was therein and thereby agreed between the libellant and the respondent, that the respondent should have lay-days in within which to load and dispatch the said ship from the port of And in case the vessel should be longer detained, the said respondent agreed to pay the said libellant demurrage at the rate of dollars per day, for each and every day so detained, provided such detention should happen by default of the said respondent or his agent. And it was further understood and agreed that the cargo should be received and delivered alongside, within reach of the vessel's tackles. And it was therein and thereby further understood and agreed that the said charter, and the said days should commence when the said vessel was ready to receive cargo at her place of loading, and notice thereof given to the said respondent or to his agent.

Third. That the said ship having been put in readiness to perform the aforesaid voyage, and ready to receive cargo at the said libellant on the day of one thou-

sand eight hundred and caused notice thereof to be given to the respondent, pursuant to the terms of the said charter-party. And the said respondent commenced to furnish the cargo. But notwithstanding such notice was duly given to the respondent, and notwithstanding the said ship was from that time at the direction and disposal of the said respondent, and notwithstanding there was no fault or remissness on the part of the libellant, the said respondent, by his own default, did not load the said ship and give her dispatch from the port of within days, but delayed her, contrary to the terms of the said charter-party, until the day of thereafter, when she sailed, and the libellant became thereby entitled to demand from the respondent demurrage for days, at the rate of dollars per day, amounting to the sum of dollars over and above all just deductions.

Fourth. That said vessel well and faithfully performed said voyage, and the respondent paid the charter-money therein stipulated except said demurrage. But notwithstanding the said respondent has been frequently requested to pay the said sum of dollars, the demurrage aforesaid, he has refused and still refuses so to do.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

[*Conclude as in No. 21.*]



FORM No. 32.

**LIBEL IN REM AND IN PERSONAM BY A SEAMAN AGAINST
A SHIP, FREIGHT, AND MASTER, FOR WAGES AND
SHORT ALLOWANCE OF BREAD.**

To the Honorable, &c.

The libel of A. B., of said district, mariner, late seaman on board the ship whereof one C. D. now is, or lately was master, against the said ship, her tackle, apparel, and

furniture, and the freight due for her cargo, now or lately laden therein ; also, against all persons lawfully intervening for their interests in said vessel, and against C. D., master of said vessel, in a cause of wages, civil and maritime, alleges as follows : —

First. That some time in the month of one thousand eight hundred and the ship whereof the said C. D. was master, then lying in the port of and bound on a voyage from the said port of to one or more ports in and back to the port of discharge in the United States ; the said master, by himself or his agent, hired the libellant to serve as a seaman on board said vessel, for and during the voyage, at and after the rate of wages of dollars per month. That, for the due performance of the said voyage the libellant signed shipping articles, which are now in the possession or under the control of the master or owners of said vessel, and which the libellant prays may be produced to this honorable court for further certainty in the premises, and for the benefit of the libellant. That, in pursuance of the said agreement, the libellant entered into the service of the said vessel as such seaman as aforesaid, on or about the day of the month of in the year aforesaid.

. Second. That the said vessel having taken on board a cargo, proceeded therewith, and with the libellant on board, for the port of where she safely arrived and delivered her cargo and made freight. That the said vessel having taken ballast on board, proceeded therewith, and with the libellant on board, for the port of where she safely arrived. That having there taken on board a cargo, she proceeded therewith, and with the libellant on board, for the port of where she safely arrived, and where she took on board some additional cargo, and proceeded to the port of where she safely arrived on or about the day of instant, where she now is, and where, since the arrival of the said vessel, the libellant has been duly discharged from the service thereof.

Third. That during the voyage from to and for about one month and a half, the libellant was on a short

allowance of good and wholesome ship-bread, the bread which was furnished to the libellant being mouldy, rotten, and wormy, and unfit to be eaten ; and that during all the voyage from the port of to and from thence till the return of the vessel to this port, and for the period of about six months and a half, he was on a short allowance of good and wholesome ship-bread (the bread that was furnished to the libellant being of the same description as that furnished for his use on the passage to), the said master having neglected to put on board the requisite quantity of provisions for the said voyage, according to the act of Congress in such case made and provided.

Fourth. That during the whole time the libellant was on board the said vessel, he well and faithfully performed his duty as such seaman, as aforesaid, and was obedient to all lawful commands of the said master and the other officers of the vessel, whereby and by reason of being put on such short allowance as aforesaid he became entitled to demand from the said vessel, for wages and short allowance, the sum of dollars and upwards.

Fifth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said ship her tackle, apparel, and furniture, and her freight, as aforesaid ; and that the said C. D., master of the said vessel, and all persons having any right, title, or interest in said ship, her tackle, apparel, and furniture, may be cited to appear and answer all the matters aforesaid, and that this honorable court would be pleased to decree the payment of the wages and short allowance aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and in justice he may be entitled to receive.

FORM No. 33.

LIBEL *IN REM* BY THE OWNERS OF A VESSEL TO
OBTAIN POSSESSION OF HER.

To the Honorable, &c.

The libel of A. B. and C. D., of merchants, owners of the ship or vessel, the her tackle, apparel, and furniture, against all persons intervening for their interest therein, in a cause of possession, civil and maritime, alleges as follows: —

First. That they are the true and only owners of the ship her tackle, apparel, and furniture, and being such owners on or about the day of 18 appointed one C. D., master of said vessel, to navigate and sail her for them, at the wages agreed upon between them, and the said C. D. continued to be such master till the day of instant, when the libellants removed him as master and appointed another master in his place.

Second. That when the new master, so appointed by the libellants, went on board said vessel, by their orders, to enter upon his duties as such master, the said C. D. refused to give up the possession or papers of said vessel to the said master, or to the libellants who have demanded the same, to the great damage of the libellants.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Whereupon the libellants pray that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that the said C. D. may be personally cited to appear and answer all the matters aforesaid, and that the said vessel, her tackle, apparel, and furniture, may be delivered to the libellants, and that the said C. D. may be condemned to pay to the libellants their damages and costs in the premises, and that they may have such other and further relief in the premises as in law and justice they may be entitled to receive.

FORM No. 34.

LIBEL IN REM AGAINST MERCHANDISE FOR POSSESSION.

To the Honorable, &c.

The libel of A. B., of merchant, against (*here describe the merchandise*), and against C. D., master of the ship in a cause of possession, civil and maritime, alleges as follows: —

First. That heretofore, while the said vessel was lying in the port of and about to sail for the port of Y. Z., of aforesaid, shipped on board said vessel, consigned to the libellant (*here describe the merchandise*), and the said master signed the usual bills of lading for the same, whereby he agreed to deliver the same to the libellant in on payment of the freight for the same at the rate of

Second. That the said ship having arrived in the said port of the libellant paid to the said master his freight on the said merchandise, and demanded the delivery thereof, but the said master refused to deliver the same to him unless the libellant would pay dollars as an average contribution, which the libellant was not bound to pay, not being liable therefor, and the said master still refuses to deliver to him the said nine cases, and each of them, which are of the value of dollars and upward, to the great damage of the libellant.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in causes of admiralty and maritime jurisdiction, may issue against the said (*here describe the merchandise*), and that the said C. D. may be personally cited to appear and answer, on oath, all the matters aforesaid, and that the said merchandise may be delivered to the libellant, and that the said C. D. may be compelled to pay to the libellant, his damages and costs in the premises, and that he may have such other and further relief in the premises as in law and justice he may be entitled to receive.

FORM No. 35.

LIBEL IN A SUIT BY A CO-TENANT OF A SHIP, OWNING MORE THAN ONE-HALF THEREOF, TO OBTAIN POSSESSION THEREOF FROM HIS CO-TENANT.

To the Honorable, &c.

A. B. of exhibits this his libel against the ship (whereof C. D. is or lately was master), now lying in the port of in said district, and within the admiralty and maritime jurisdiction of this honorable court, her boats, tackle, apparel, and furniture, and against E. F., of and all other persons lawfully intervening for their interest therein, in a cause of possession, civil and maritime, and thereupon the said A. B. doth allege and articulately propound as follows, to wit:—

First. That the said ship is a maritime vessel of the burthen of tons or thereabouts; that the libellant is the true and lawful owner of three-fifths parts of the said ship (*or, as the case may be*), and the said E. F. the owner of the remaining two-fifths parts thereof.

Second. (*Here state the facts and circumstances which obliged the libellant to institute the suit, as,*) that he is desirous of sending the vessel upon some particular voyage, but that his co-tenant having theretofore undertaken to act as ship's husband or managing owner, the vessel is consequently still in his possession or under his control, and that he refuses to agree to such voyage or to allow the vessel to proceed thereon; *or* that he is employing the vessel in a manner, *or* threatens to send her on some voyage, which the libellant disapproves, and that he refuses to desist therefrom; *or*, that the libellant lacks confidence in the master and desires to substitute another in his place, but that the master, acting under the orders or with the knowledge and consent of the minor owner, declares it to be his intention to resist the will of the libellant in this respect, and to continue in command of the vessel, *or* threatens immediately to proceed to sea with the vessel; *or*, that the vessel being a registered vessel, the libellant wishes to surrender the certificate of registry and to have the vessel

enrolled and licensed for the coasting trade, *or* fisheries, *or vice versa*, but that the minor owner (*or* master) has possession of the certificate of registry (*or* of enrolment and license) and refuses to deliver up the same for this purpose, and threatens immediately to send (*or proceed with*) the vessel to sea (*or as the case may be*).

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that a warrant of arrest may issue against the said ship her boats, tackle, apparel, and furniture; and also a process of monition, commanding the marshal to cite and admonish the said E. F., part-owner of the said ship as aforesaid, and the said C. D., master as aforesaid, and all other persons in general, who have or pretend to have any right, title, or interest therein, to appear and answer the libellant in the premises, and especially show cause, if any they have, why the possession of the said ship should not be delivered to the libellant, and if no sufficient cause to the contrary be shown, that this honorable court will pronounce accordingly, and will decree the possession of the said ship to be forthwith delivered to the libellant, and for such other and further relief and redress as to right and justice may appertain, and as this court is competent to give in the premises.

FORM No. 36.

LIBEL *IN REM* BY A PART-OWNER FOR A SALE OF THE
VESSEL.

[*Address and statement of parties as in No. 33; then proceed:*] in a cause of licitation or partition, alleges as follows:—

First. That he is two-fifths owner of the ship her tackle, apparel, furniture, and boats; that C. D. is owner of two-fifths and E. F. is owner of one-fifth, and is also master of said vessel, and she is now in the port of

Second. That in consequence of diversity of opinion and

interest in relation to the employment of said vessel, which is irreconcilable, the said owners are unable to agree upon any voyage or business for said vessel. That the libellant has named a reasonable price for said vessel, at which he is willing to sell his share, or buy the shares of his co-owners, but they refuse either to buy or sell, and, in consequence of their impracticability and obstinacy, he is unable to sell to any other person.

Third. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process in due form of law, according to the course of this honorable court in all cases of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, furniture, and boats, and that all persons claiming any right in said vessel, and especially the said C. D. and E. F., part-owners and master as aforesaid, may be cited to appear and answer the matters aforesaid, and that the said vessel, her tackle, apparel, furniture, and boats may be sold under the direction of this honorable court, and the proceeds thereof brought into court to be divided and distributed according to law, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

FORM No. 37.

LIBEL IN A SUIT BY A CO-TENANT OWNING A MOIETY OR LESS THAN A MOIETY OF A SHIP, TO COMPEL HIS CO-TENANT TO GIVE SECURITY FOR HER SAFE RETURN.

To the Honorable, &c.

A. B. of exhibits this his libel against the ship (whereof C. D. is, or lately was master), now lying in the port of in the said district, and within the admiralty and maritime jurisdiction of this honorable court, her boats, tackle, apparel, and furniture, and also against E. F., of and all other persons lawfully intervening for their interest

therein in a cause of possession, civil and maritime. And thereupon the said A. B. doth allege and articulately propound as follows, to wit : —

First. That the said ship is a maritime vessel of the burthen of tons or thereabouts ; and the libellant is the true and lawful owner of one equal moiety (*or* of two-fifths parts, *as the case may be*) of the said ship and the said E. F. is the owner of the other moiety (*or* remaining parts) thereof.

Second. That the aforesaid E. F. being in possession of the said ship, and assuming and exercising the power of employing her according to his own will and pleasure, declares it to be his intention, and is making preparations, to send the said ship on a voyage to under the charge of the said C. D., who has been constituted master for the said voyage by the aforesaid E. F. without consultation with the libellant.

Third. That the libellant disapproves of the said contemplated voyage, and of the appointment of the said C. D. as such master, and he has repeatedly informed the said E. F. of his objections thereto. That the libellant is willing, and has repeatedly offered and proposed to the said E. F., to send the said ship at their joint expense and risk on some other shorter or less hazardous voyage (*or, as the case may be*), to be mutually agreed upon between the said E. F. and the libellant, and under the charge of some other more competent and trustworthy master, to be by them jointly appointed (*or, if the libellant desires to send the vessel on some particular voyage, the fact should be so stated*) ; but that the said E. F. utterly refuses to accede to the wishes of the libellant in this behalf, and persists in his aforesaid design against the will and expostulations of the libellant.

Fourth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that a warrant of arrest may issue against the said ship her boats, tackle, apparel, and furniture ; and also process of monition, commanding the marshal to cite and admonish the aforesaid E. F., part-owner

of the said ship as aforesaid, and the aforesaid C. D., master as aforesaid, and all other persons in general who have or pretend to have any right, title, or interest therein, to appear and answer the libellant in the premises, and especially show cause, if any they have, why the said ship shall not be detained in custody, and not allowed to depart from the aforesaid port of until good and sufficient security be given to the libellant to the extent of his aforesaid interest therein; and if no sufficient cause to the contrary be shown, that this honorable court will pronounce accordingly, and will decree the said ship to remain under arrest, until such security shall be given as aforesaid, and for such other and further relief and redress as to right and justice appertain, and the court is competent to give in the premises.

FORM No. 38.

ORDER ON LIBEL, THAT PROCESS ISSUE.

On filing the within libel and otherwise complying with the rules of the court, let a issue in this cause against *(according to the libel)*.

FORM No. 39.

ORDER ON LIBEL, THAT WARRANT OF ARREST ISSUE.

On filing the within libel and otherwise complying with the rules of the court, let a warrant of arrest issue in this cause against C. D., the defendant, and let him be held to bail in dollars.

FORM No. 40.

DILATORY EXCEPTIONS TO A LIBEL.

The exceptions of C. D., defendant, to the libel of A. B., libellant, filed in the above cause :

First Exception. — That the same is not signed by the libellant, nor by any proctor of this court.

Second Exception. — That the same does not allege that the libellant has sustained any damages in the matter of the libel ; nor that the defendant is indebted to the libellant in any sum.

Third Exception. — That the third article thereof is scandalous and impertinent.

— — — *Proctor.*



FORM No. 41.

EXCEPTIONS TO A LIBEL FOR MISJOINDER.

C. D., the defendant, excepts to the libel in this cause, for this : —

First. That it misjoins in the same cause a suit *in rem* against the ship and a suit *in personam* against C. D., the master thereof.

Second. That it misjoins an alleged cause of action against the vessel for a violation of a charter-party, and also an alleged cause of action against C. D. for the appropriating of certain property by the said C. D.

Third. That it misjoins parties who cannot rightfully be joined in such a suit, and misjoins causes of action which cannot be rightfully joined in such a suit.

— — — *Proctor.*



FORM No. 42.

PEREMPTORY EXCEPTION TO LIBEL.

The exception of C. D., defendant, to the libel of A. B., libellant, alleges that, on the day of last, the said libellant, in consideration of one dollar to him paid, released the said defendant from the cause of action set forth in the said libel ; and, therefore, the said defendant is not bound further to answer the same ; and he prays that the said libel may be dismissed with costs.

FORM NO. 43.

COMMENCEMENT OF AN ANSWER BY THE OWNER OF A
VESSEL, PROCEEDED AGAINST IN A SUIT *IN REM*,
WHERE THE CLAIM OF PROPERTY IS INCORPORATED
IN THE ANSWER.

DISTRICT COURT OF THE UNITED STATES OF AMERICA, } *In Admiralty.*
District of

The answer of G. H., owner and claimant of the ship
to the libel of A. B., against the said ship.

And now comes G. H., of owner of the ship
and for answer to the libel of A. B., against the said ship,
doth allege and propound as follows, to wit:—

First. That the said G. H. is the true and *bona fide* owner
of (*or* owner of one-fourth of, *or otherwise, as the case may be*)
the said ship and that no other person is the owner thereof.

Second. That, &c.



FORM NO. 44.

THE LIKE, WHEN THE CLAIM IS INTERPOSED BY AN
AGENT OR A CONSIGNEE.

In Admiralty.

The answer of E. F., agent of G. H., the owner (*or* of
E. F., the consignee), and claimant of the ship to the
libel of A. B., against the said ship.

And now comes E. F., of agent of G. H., of
the owner (*or* E. F., of consignee) of the ship
and for answer to the libel of A. B. against the said ship
doth allege and propound as follows, to wit:—

First. That the said G. H. is the true and *bona fide* owner
of the said ship and that no other person is the owner
thereof; and that he, the said E. F., is duly authorized by the
said G. H. to put in a claim on his behalf, to the said ship, in
this suit.

Second. That, &c.

FORM No. 45.

THE LIKE WHERE THE CLAIM IS INTERPOSED BY THE
MASTER.

In Admiralty.

The answer of C. D., master and claimant of the ship
in behalf of G. H., the owner thereof, to the libel of
A. B. against the said ship.

And now comes C. D., master of the said ship and
for answer to the libel of A. B. against the said ship doth
allege and propound as follows, to wit:—

First. That G. H., of is the true and *bona fide* owner
of the said ship and that no other person is the owner
thereof; and that he, the said C. D., is now the master of the
said ship, and as such master has the possession, and is the
lawful bailee thereof for the said G. H.

Second. That, &c.



FORM No. 46.

COMMENCEMENT OF AN ANSWER IN A SUIT IN
PERSONAM.

In Admiralty.

The answer of C. D., the defendant, to the libel of A. B.,
libellant.

And now comes C. D., of and for answer to the libel of
A. B. against him the said C. D., doth allege and propound
as follows, to wit:—

First. That, &c.



FORM No. 47.

CONCLUSION OF THE ANSWER.

That all and singular the premises are true.

Wherefore the respondent prays that this honorable court
will pronounce against the demand of the libellant in his
aforesaid libel mentioned and set forth, with costs.

FORM No. 48.

STIPULATION FOR COSTS TO BE GIVEN BY THE
CLAIMANT.

Whereas, a libel was filed in this court on the day
of in the year of our Lord one thousand eight hundred
and by A. B., against for the reasons and causes
in the said libel mentioned.

And whereas a claim has been filed in said cause by C. D.,
and the said C. D. and E. F., his surety, the parties hereto,
hereby consenting that in case of default or contumacy on
the part of the claimant or his surety, a summary decree may
be entered against them and each of them, and that execu-
tion thereon for the sum of dollars may issue against
their goods, chattels, and lands.

Now, therefore, it is hereby stipulated for the benefit of
whom it may concern that the stipulators undersigned are,
and each of them is, hereby bound in the sum of dol-
lars, conditioned that the claimant above named shall pay all
costs and expenses which shall be awarded against him by
the final decree of the court or upon an appeal by the appel-
late court.

Taken and acknowledged before me, this day of 18

U. S. Commissioner.

UNITED STATES OF AMERICA,
District of

— — — party to the above stipulation, being duly
sworn, deposes and says that he is worth the sum of
dollars, over and above all his just debts and liabilities.

Sworn to before me, this day of 18

FORM No. 49.

EXCEPTIONS TO AN ANSWER—FOR INSUFFICIENCY.

Exceptions taken by the said libellant to the answer of
said C. D., claimant (*or* defendant), in the above cause, to
the libel of the said A. B., filed herein.

First Exception. — For that the said claimant (*or* defendant) has not well and sufficiently answered and set forth (*here state in what the answer is insufficient*).

Second Exception. — For that (*here set forth the other matters in which the answer is insufficient*), in all which particulars the said answer of the said claimant (*or* defendant) is imperfect, insufficient, and evasive, and the libellant therefore excepts thereto, and prays that the said claimant (*or* defendant) may be compelled to put in a further and sufficient answer to the said libel.

Proctor for Libellant.

— ♦ —

FORM NO. 50.

AFFIDAVIT TO OBTAIN INTERLOCUTORY SALE.

District of ss.

A. B., one of the libellants in this cause, being duly sworn, says, that (*here insert a statement of the facts showing the necessity for a sale, as, the ship* *is now at the wharf in the port of* *subject to large and increasing expense for wharfage, keeper's fees, and other expenses. That she is in a damaged condition, and requires care and repairs. That a large portion of her cargo is perishable, being sugar, and in a wet and damaged condition. The only claims that have been interposed are of C. D., &c.) That in his opinion the interest of all parties concerned will be promoted by a speedy judicial sale of said ship, her tackle, apparel, and furniture, and cargo, the proceeds of such sale to be brought into court for the benefit of whom it may concern, subject to the further order of the court.*

A. B.

Sworn to before me, this day of 18

FORM No. 51.

NOTICE OF MOTION FOR INTERLOCUTORY SALE.

SIR, — You will please take notice that, on the libel and claim in this cause, and on the affidavit of A. B., a copy of which is annexed hereto, a motion will be made before his Honor judge of this court, on the day of 18 at o'clock in the noon of that day, for an order that the ship and her cargo above mentioned be sold under the direction of the marshal, and the proceeds brought into court.

Dated 18

Yours,

Proctor for Libellant.

To — — — *Proctor for Claimant.*

FORM No. 52.

ORDER FOR INTERLOCUTORY SALE OF SHIP AND CARGO.

On reading and filing the affidavit of A. B., and the admission of proctor for the claimant, and on motion of proctor for the libellant, it is ordered, that the ship her tackle, apparel, and furniture, and cargo, be sold by the marshal on days' public notice, and that a writ of *venditioni exponas* issue accordingly; and it is further ordered, that the marshal bring the proceeds of such sale into this court, and pay the same to the clerk thereof.

FORM No. 53.

ORDER APPOINTING APPRAISERS.

On motion of proctor for the libellant (*or claimant*), it is ordered that C. D. and E. F. be and they are hereby, appointed appraisers, to appraise the value of the above-mentioned (*here describe the property*), proceeded against herein. And it is further ordered, that the clerk of this court give notice of the appointment of said C. D. and E. F. as such appraisers.

FORM No. 54.

NOTICE TO APPRAISERS.

SIR,— Please to take notice, that you, together with E. F., have been appointed appraisers to appraise the value of (*here describe the property*), mentioned in the above-entitled suit, and you are hereby requested to appear before the said court (*or, if the application be made in vacation*, before the judge of the said court) at on at o'clock in the noon, to take the oath required by law.

Dated 18 Yours, &c.

— — Clerk.

To C. D.

FORM No. 55.

APPRAISERS' OATH.

We, the subscribers, having been duly appointed appraisers to appraise (*here describe the property*), mentioned in the above-entitled suit, do severally solemnly swear that we will faithfully and fairly appraise the same, and make a true report of the value thereof, according to the best of our understanding, without unnecessary delay.

C. D.

E. F.

Subscribed and sworn to, this day of before me,

U. S. Commissioner.

FORM No. 56.

NOTICE OF APPRAISEMENT.

The undersigned having been appointed appraisers to appraise (*here describe the property*), do hereby give public notice, that we will proceed to appraise the same at on the day of 18 at o'clock M. of that day.

Dated 18

C. D.

E. F.

FORM No. 57.

APPRAISERS' REPORT.

The undersigned having been duly appointed and sworn as appraisers to appraise the value of (*describe the property*), do report that we have examined and appraised the same, and do find that the same is worth the sum of dollars.

Dated 18

All of which is respectfully submitted.

C. D.

E. F.

FORM No. 58.

CONSENT TO STIPULATE FOR PROPERTY WITHOUT PROCESS.

A libel having been filed in this cause, I hereby consent that no process issue thereon to arrest the said vessel, provided that, in the course of this day, E. F., the owner thereof, file a claim, and with G. H., as surety, enter into the usual stipulation for costs and value, in the sum of dollars, in the same manner as if the said vessel were arrested, and were to be discharged on stipulation.

Dated 18

Proctor for Libellant.

FORM No. 59.

CONSENT THAT A VESSEL BE DISCHARGED ON STIPULATION.

The ship having been arrested on the process issued in this cause, we consent that, on filing the usual stipulation for costs and the usual stipulation to appear, abide, and perform the decree in the sum of dollars, and on filing a claim, and on complying with the rules of the court as to the fees of the officers of court, the said ship be discharged from custody and arrest.

Dated 18

Proctor for Libellant.

FORM No. 60.

CONSENT — FIXING THE VALUE WITHOUT APPRAISEMENT
AND DISCHARGING THE PROPERTY FROM CUSTODY.

I hereby consent that the value of the ship her
tackle, apparel, and furniture, be fixed at dollars with-
out appraisement, and that, on filing a claim and the necessary
stipulations for costs and value, &c., and complying with the
rules of court as to fees, the said ship be discharged from
custody.

Dated 18

Proctor for Libellant.

FORM No. 61.

STIPULATION FOR VALUE.

Whereas, a libel was filed on the day of in
the year of our Lord one thousand eight hundred and
by A. B. against the ship her tackle, apparel, and fur-
niture, for the reasons and causes in the said libel mentioned;
and whereas the said vessel, her tackle, apparel, and furniture,
is now in the custody of the marshal under the process issued
in pursuance of the prayer of said libel, and is of the value
of dollars, as appears by a consent (*or* appraisement)
now on file in said court.

And whereas a claim to said vessel has been filed by
C. D., and the said C. D. and E. F., his surety, the parties
hereto hereby consent and agree that in case of default or
contumacy on the part of the claimant or his sureties, a sum-
mary decree may be entered against them and each of them,
and that execution may issue against their goods, chattels,
and lands.

Now, therefore, it is hereby stipulated, for the benefit of
whom it may concern, that the stipulators undersigned are,
and each of them is, bound in the sum of dollars, con-
ditioned that they shall at any time, upon the interlocutory
and final order and decree of the said District Court, or of
any appellate court to which the above-named suit may pro-

ceed, and upon notice of such order or decree, to said claimant, or Esquire, his proctor, pay into court the full value aforesaid, and abide by, and pay the money awarded by, the final decree rendered by this court or the appellate court if any appeal intervene.

Taken and acknowledged this day of 18
before me,

U. S. Commissioner.

UNITED STATES OF AMERICA, } ss.
District of

_____ party to the above stipulation, being duly sworn, deposes and says that he is worth the sum of _____ dollars, over and above all his just debts and liabilities.

Sworn to before me this day of 18

U. S. Commissioner.

—•—
FORM No. 62.

BOND UNDER SECTION 941.

Know all men by these presents, that we, C. D., E. F., and G. H., are held and firmly bound unto A. B. in the sum of _____ (*double the amount claimed in the libel*) dollars, lawful money of the United States of America, to be paid to the said _____ his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals. Dated this _____ day of _____ in the year of our Lord one thousand eight hundred and _____

Whereas, a libel has been filed in the District Court of the United States for the _____ District of _____ on the _____ day of _____ 18 _____ by _____ against the ship or vessel _____ in a certain action, &c., civil and maritime, for therein alleged to be due and owing to the said libellant, amounting to (*the amount claimed in the libel*).

The condition of this obligation is such, that if the above-bounden shall abide and answer the decree of the court in such cause, then the above obligation to be void ; otherwise to remain in full force and virtue.

Sealed and delivered in presence of

UNITED STATES OF AMERICA,

District of

— — being duly sworn, says that he resides at No. — and that he is worth the sum of — dollars over and above all his just debts and liabilities.

Sworn to before me, this — day of — 18

[*Certificate of approval by the Judge or Collector of the port.*]

I hereby approve of the sureties in the within bond.

Dated, &c.

(Signed by the Judge or the Collector.)



FORM No. 63.

PENAL BOND TO THE MARSHAL ON ARREST OF THE PERSON.

Know all men by these presents, that we, C. D., E. F., and G. H., are held and firmly bound unto Y. Z., marshal for the District of — in the sum of — dollars, lawful money of the United States of America, to be paid to the said Y. Z., his executors, administrators, or assigns ; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated this — day of — in the year of our Lord one thousand eight hundred and —

Whereas, a libel has been filed in the District Court of the United States for the — District of — on the day of — 18 — by A. B. against the above-bounden C. D., in a certain action, civil and maritime, for wages, therein alleged to be due and owing to the said libellant, amounting to — dollars.

The condition of this obligation is such, that if the above-bounden C. D. shall appear in the said suit, before the said District Court of the United States for the District of on the day of 18 at in the city of and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the said court, or in any appellate court, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in presence of

UNITED STATES OF AMERICA,

District of

— — — being duly sworn, says that he resides at No. and that he is worth the sum of dollars over and above all his just debts and liabilities.

Sworn to before me, this day of 18

— ♦ —
FORM No. 64.

STIPULATION FOR THE SAFE RETURN OF A VESSEL IN
A SUIT BY A PART-OWNER.

Whereas, a libel was filed in this court, on the day of in the year of our Lord one thousand eight hundred and by A. B., owner of part of the ship or vessel called the her tackle, &c., against the said ship or vessel, her tackle, &c., for the reasons and causes in the said libel mentioned, which said vessel, her tackle, &c., is of the value of dollars, as appears by the consent (*or appraisement*) on file in said cause, and C. D. and E. F., the other owners of the said vessel, and G. H. and I. J., their sureties, parties hereto, hereby consenting and agreeing, that in case of default on the part of the libellant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of dollars.

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the stipulators under-

signed are, and each of them is, bound in the sum of
(double the value of the libellant's share) dollars, conditioned
 that the said vessel shall safely return from her present in-
 tended voyage, to the port of

Taken and acknowledged this day of 18

U. S. Commissioner.

UNITED STATES OF AMERICA, } ss.
 District of

— — — and — — — parties to the above stipula-
 tion, being duly sworn, depose and say each for himself,
 that he is worth the sum of dollars, over and above
 all his just debts and liabilities.

— ♦ —
 FORM No. 65.

PROCEEDINGS UNDER SECTION 4284 OF THE REVISED
 STATUTES OF THE UNITED STATES.

To the Honorable, &c..

The petition of respectfully shows: —

That your petitioners are the sole owners of the said
 steamboat her engine, tackle, apparel, and furniture.

That early in the morning of the day of last
 past, a collision occurred upon the waters of near
 between the said steamboat an American vessel, of
 which your petitioners were then the owners, and the
 schooner or vessel called the the said steamboat be-
 ing then bound on her regular trip from the city and port of
 in the State of to the city and port of
 with a cargo consisting of goods, wares and merchandise
 on board.

That in consequence of such collision, the said steamboat
 was set on fire, and soon afterwards sank, with all her said
 cargo on board of her.

That such collision and fire were occasioned or incurred
 without the design, neglect, privity, or knowledge of your
 petitioners.

That on or about the day of last past, the libel herein was filed by the above-named libellants against the said steamboat, &c., to recover the sum of eight thousand dollars for damages, which the libellants allege they have sustained by reason of the destruction of certain articles of merchandise specified in said libel, which, it is therein alleged, were shipped on board of said steamboat, and upon the filing of said libel process was issued out of this court, at the instance of said libellants, under which the said steamboat, &c. (the same having been raised and brought to the port of), was seized by the marshal of the said District, and is now in the custody of this court.

That the said steamboat was freighted with a large cargo, consisting of goods, wares, and merchandise, consigned and belonging to a very large number of individuals, companies, and firms, whose names are unknown to your petitioners, and the same was to be delivered by said steamboat at the city of and that by reason of the said collision and fire the said steamboat became a total wreck, and was unable to proceed on her said trip aforesaid.

And your petitioners further show, that the owners and consignees of the goods on board said steamboat were very numerous, and your petitioners have reason to believe and do believe that in addition to the claim made by the libellants herein, other claims on behalf of the owners of other portions of said cargo on board of the said steamboat at the time of said collision and fire, will be made against your petitioners as owners of said steamboat, &c., or against the said steamboat, her engine, tackle, apparel, and furniture, and suits and proceedings will be instituted to recover the same, which claims, if established, will greatly exceed the value of said steamboat, &c., and of her freight pending at the time of such collision, fire, and loss.

Your petitioners therefore pray that they may be declared as entitled to the benefit of section 4284 of the Revised Statutes of the United States, that the said steamboat, her engine, tackle, apparel, and furniture, and her freight then pending at the time of the said collision and fire, may be appraised by appraisers to be appointed by this court.

That your petitioners may be authorized to give a stipulation with good and sufficient sureties, according to the rules and practice of this court, for such appraised value, such stipulation to be for the benefit of the libellants herein (in case they shall establish the liability of the said steamboat), and of all other claimants who may, by actions or otherwise, intervene and prove to be legally entitled to compensation for losses sustained by reason of said collision and fire, in proportion to the amount of the respective losses of all such claimants, and that upon the due execution of such stipulation, the said steamboat, her engine, tackle, apparel, and furniture, as well as the owners thereof, may be discharged from all liability for all losses incurred by reason of such collision and fire, and that your petitioners may have such other or further relief as may be just and proper in the premises and as this court shall be pleased to grant.

A. B.
E. F.

— — — *Proctor.*

FORM No. 66.

NOTICE OF MOTION ON FOREGOING PETITION.

SIR, — Please to take notice that upon the annexed petition and claim herein, and the libel, process, and proceedings in this cause, an application will be made to this court at chambers of the judge thereof, in the United States court-room building in the city of on the day of instant, at o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order in accordance with the prayer of the said petition.

Yours, &c.

Dated 18

— — —
Proctor for Petitioners.

To Esq., *Proctor for Libellants.*

FORM No. 67.

ORDER FOR A REFERENCE TO ASCERTAIN AND REPORT
THE PRESENT VALUE OF THE VESSEL, AND THAT
THE CLAIMANTS GIVE A STIPULATION IN THE AMOUNT
SO REPORTED.

On reading and filing the petition of the owners and
claimants of the above-named steamboat her engine,
tackle, apparel, and furniture, together with admission of ser-
vice thereof, and of notice of motion on the proctor of the
libellants herein, and due proof having been filed of the pub-
lication of an order heretofore made in this cause, requiring
all parties having claims against the said steamboat or her
owners arising out of the collision, fire, and loss mentioned in
said petition, to show cause, if any they have, why the prayer
of the said petitioners should not be granted, &c. ; and after
hearing the counsel of the said petitioners in support of the
said petition, and Esq., of counsel for the libellants in
this cause, and also the counsel for other parties who claim
damages by reason of losses alleged to have been sustained
by them, occasioned by the collision and fire mentioned in
said petition, in opposition thereto, and the owners and claim-
ants of the said steamboat, &c., having thereafter applied to
bond the said steamboat, according to the rules and practice
of this court in admiralty, and it appearing that the present
value of the said steamboat, &c., is the same as her value im-
mediately previous to said accident, and mature deliberation
being thereupon had, it is, on motion of Esq., of counsel
for said petitioners, ordered that it be referred to Esq.,
one of the commissioners of this court, upon at least two
days' notice to all proctors for the libellants, who have filed
libels against the said steamboat, to ascertain, appraise, and
report to this court the present value of the said steamboat,
her engine, tackle, &c., and upon the coming in of said
report, the said as such owners and claimants of said
steamboat, &c., give a stipulation with sufficient sureties,
according to the course and practice of this court on the
bonding of vessels, in the amount so reported, and that such

stipulation be for the benefit of the libellants herein (in case they shall establish the liability of said steamboat), and of all persons and parties who may by due proceedings in this court show themselves entitled to liens upon said vessel, by reason of such collision and fire, and that upon the entering into and filing of such stipulation, the said steamboat, her engine, boiler, tackle, apparel, and furniture, be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation is given.

And it is further ordered that the said libellants, and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damage by reason of such collision and fire, be and they are hereby declared to be bound by this order.

— — Clerk.



FORM No. 68.

STIPULATION FOR VALUE IN PURSUANCE OF THE FOREGOING ORDER.

Whereas, a libel was filed on the day of in the year of our Lord one thousand eight hundred and by against the steamboat or vessel called the her engine, tackle, apparel, and furniture, for the reason and causes in the said libel mentioned.

And whereas, the said steamboat is in the custody of the marshal of this district, under the process issued in pursuance of the prayer of said libel.

And whereas, since the filing of said libel, certain other libels have been filed for and in behalf of certain other libellants against the said steamboat, &c., for the reasons and causes in the respective libels mentioned and set forth, and the said vessel is also in the custody of said marshal under the process issued in pursuance of the prayers of said libel respectively.

And whereas, upon the petition of as sole owners and claimants of the said steamboat, &c., an order was made and entered in this cause on the day of last

past, whereby it was ordered that it be referred to Esq., one of the commissioners of this court, upon at least two days' notice to all the proctors for the libellants who have filed libels against the said steamboat, to ascertain, appraise, and report to this court the present value of the said steamboat, her engine, tackle, &c., and that upon the coming in of the said report the said and such owners and claimants of said steamboat, &c., have leave to give a stipulation with sufficient sureties according to the course and practice of this court on the bonding of vessels in the amount so reported, and that such stipulation be for the benefit of the libellants herein (in case they should establish the liability of the said steamboat), and of all persons and parties who might by due proceedings in this court show themselves entitled to liens upon the said vessel by reason of the collision and fire mentioned in the said petition, and that upon the entering into and filing of such stipulation, the said steamboat, her engine, boiler, tackle, apparel, and furniture should be discharged from all liability for losses and damages occasioned to all the parties for whose benefit the said stipulation should be given, and in and by which said order it was further ordered, that the said libellants and all other persons and parties having liens on the said steamboat, her engine, boiler, tackle, apparel, and furniture, for loss or damage by reason of such collision and fire, should be and they were declared to be bound by said order, as by reference to the said petition and order now on file in the office of the clerk of this court will more fully appear.

And whereas, the said commissioner, in pursuance of said order, has made his report to this court, from which it appears that from the proofs taken by him he did find the present value of said steamboat her tackle, &c., to be the sum of as it appears by his said report now on file in the office of the clerk of this court, which said report has been confirmed.

And whereas, the undersigned, above named, have filed a claim to said steamboat, &c., as sole owners thereof, on each of the actions commenced in this court, and as such claimants and owners with their sureties, the parties thereto,

have applied to the court for leave to give this stipulation and to have the same stand in place of the said steamboat, &c., to be enforced in such manner as the court may from time to time order and direct for the benefit respectively of all parties who have already filed, or may hereafter file, libels in this court against the said steamboat, &c., to establish or enforce any lien or claim upon or against her arising out of the said collision and fire, and the undersigned, the parties hereto, hereby consenting and agreeing that the said claimants and owners parties hereto, in all cases in which libels may hereafter be filed in this court, against the said steamboat, &c., to enforce liens or claims upon or against the said steamboat, &c., by reason of said collision and fire, upon notice thereof to them, or to Esq., their proctor, or to such other proctor as may be substituted in his stead herein, to be given by publication or otherwise as the court may direct, will, within the time limited by the court, enter an appearance in such causes, without service of process, which is hereby waived; and that in default of such appearance, such proceedings may be had and such decree made in such causes respectively as to the court may seem proper, and with the like effect as if said owners and claimants, and their sureties the parties hereto, had appeared and consented thereto, and the parties hereby further consenting and agreeing that they will, to the extent of the amount of this stipulation, abide by and perform all orders and decrees of this court made or to be made in any proceeding taken or to be taken in this court, or in any appellate court, to secure the payment of any lien upon the said steamboat, her engine, machinery, and furniture, in place of which this stipulation is substituted, which may have arisen by reason of the collision and fire above referred to, and that in case of default or contumacy on the part of the said owners and claimants, or their sureties, execution or executions not in all to exceed the amount of this stipulation for the value of said steamboat, to wit, seventy thousand dollars, with interest thereon from this date, may issue against their goods, chattels, and lands. Now, therefore, the condition of this stipulation is such that if the stipulators undersigned, shall upon the final order or

decree of the said District Court made and entered in the above suit, or in any suit or proceeding commenced or which may be commenced in said court to establish and enforce any lien or claim upon the said steamboat, &c., by reason of the collision and fire in the aforesaid libel and in said petition mentioned, or upon the final decree of any appellate court, to which any or either of such suits or proceedings may be carried, and upon notice of such order or decree to the parties hereto, or to either of them, or to _____ Esq., proctor for the claimants of said steamboat, &c., or to such proctor as may be substituted in his stead herein, abide by all interlocutory orders and decrees of the court, and pay the money awarded to the respective parties in and by all such final decrees rendered by this court or the appellate court (if any appeal intervene) not exceeding in the aggregate the said sum of seventy thousand dollars, with interest thereon from the date hereof, then this stipulation to be void, otherwise to remain in full force and virtue.

[SEAL.]

[SEAL.]

[SEAL.]

Taken and acknowledged this _____
before me,

day of _____ 18 _____

U. S. Commissioner.

—◆—
FORM No. 69.

AFFIDAVIT TO OBTAIN AN ORDER FOR THE EXAMINATION OF A WITNESS IN BEHALF OF THE PLAINTIFF.

A. B., being sworn, says that he is the plaintiff in the above cause, that he is advised by his counsel and verily believes, that the testimony of E. F., at present of mariner (*or as the fact may be*), is material and necessary for this deponent in the prosecution of such cause; that the said E. F. lives at _____ more than one hundred miles from _____ where the court, at which this deponent expects the said cause will be tried, is appointed by law to be held; (*or, is bound on a voyage to sea; or, is about to go out of the*

district in which the said cause is pending, and to greater distance than one hundred miles, as this deponent is informed and verily believes; *or*, is so aged; *or*, so infirm as to render it probable that he will not be able to attend as a witness at the trial of such cause); and this deponent further says that he is informed and believes C. D., the above-named defendant, resides at about miles distant from the place where the examination of the said witness is expected to be taken; and that, as he is also informed and believes, G. H., the attorney of the said C. D., resides at about miles from as aforesaid.



FORM No. 70.

ORDER THEREON.

Let E. F., the witness named in the above (*or* within) affidavit, be examined *de bene esse* before me accordingly at on the day of 18 at o'clock, in the noon (*if either the defendant or his attorney resides within one hundred miles of the place of examination then add:*) and let days' notice be given to the said defendant (*or* to G. H., the attorney of said defendant, as either may be nearest) of such examination.



FORM No. 71.

NOTICE TO THE OPPOSITE PARTY OR HIS ATTORNEY.

SIR, — You are hereby notified that E. F. will be examined *de bene esse*, before me, at on the day of 18 at o'clock in the noon, as a witness for the above plaintiff, according to the act of Congress in such case made and provided; at which time and place you are entitled by law to be present, and to put interrogatories to the said witness.

Dated

Y. Z.

To C. D., the above-named defendant, or F. G., attorney for defendant.

FORM No. 72.

DEPOSITION *DE BENE ESSE*.

UNITED STATES OF AMERICA, }
District of City of County of } ss.

Be it remembered, that on this day of in the
 year of our Lord one thousand eight hundred and I
 a did call and cause to personally appear before
 me, at my office at in the city of in the said
 district of in the State aforesaid to testify, and the
 truth to say, on the part and behalf of the in a certain
 civil cause or matter of controversy, now depending and un-
 determined in the court of the United States for the
 district of at wherein A. B. is plaintiff and C. D.
 is defendant.

And the said being about the age of years, and
 having been by me first cautioned and sworn to testify the
 truth, the whole truth, and nothing but the truth, in the mat-
 ter of controversy aforesaid, I did carefully examine the said
 and he did thereupon depose, testify, and say as fol-
 lows, viz.: (*here set out the testimony*).

UNITED STATES OF AMERICA, }
District of } ss.

I, a do hereby certify, that the reason for taking
 the foregoing deposition is, and the fact is, the witness
 material and necessary in the cause in the caption of the said
 deposition named, and that he (*here set forth the
 cause for taking the deposition*).

I further certify, that notification of the time and
 place of taking the said deposition signed by me, was made
 out and served on the to be present at the taking of
 the deposition and to put interrogatories if he or they
 might think fit.

I further certify, that on the day of in the year
 of our Lord one thousand eight hundred and I was at-
 tended by and by the witness who of sound

mind and lawful age, and the witness by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition by me reduced to writing, in the presence of the witness and after carefully reading the same to the witness subscribed the same in my presence. I have retained the said deposition in my possession for the purpose of the same with my own hand the court for which the same taken.

And I do further certify, that I am not of counsel, nor attorney, for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this day of in the year of our Lord one thousand eight hundred and and of the independence of the United States the

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